No. 2485

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

R. E. GLASS, Plaintiff in Error.

vs.

UNITED STATES OF AMERICA, Defendant in Error.

TRANSCRIPT OF RECORD

Upon Writ of Error to the United States District Court for the Western District of Washington, Northern Division.

No. _____

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

W. A. Ridgway and R. E. Glass, Plaintiffs in Error,

vs.

United States of America, Defendant in Error.

TRANSCRIPT OF RECORD

Upon Writ of Error to the United States District Court for the Western District of Washington, Northern Division.

INDEX OF PRINTED TRANSCRIPT OF RECORD

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2168

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

NAMES AND ADDRESSES OF COUNSEL

F. E. HAMMOND, Esq.,

Attorney for Plaintiff in Error, 602 Mutual Life Building, Seattle, Washington.

CLAY ALLEN, Esq.,

Attorney for Defendant in Error, Room 310 Federal Building, Seattle, Washington.

United States District Court, Western District of Washington, Northern Division.
No. 2168

The United States of America, Western District of Washington—ss.

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

INDICTMENT.

MAY TERM, 1912.

The grand jurors of the United States of America, duly empaneled, sworn and charged to inquire within and for the Western District of Washington, upon their oaths present:

That heretofore, to-wit: On or about the 13th day of April, 1909, one W. A. Ridgway and one R. E. Glass, at the city of Seattle, County of King, State of Washington, within the Western District of Washington and within the jurisdiction of this court, then and there being, did then and there wilfully, knowingly, unlawfully and feloniously deposit and cause to be deposited in the post office of the United States of America, at said city of Seattle, to be sent and delivered by the post office establishment of the United States, a certain circular concerning a certain scheme dependent upon lot or chance, then and there being operated and conducted within the Western District of Washington by a certain corporation called "Jovita Land Company," and which said circular was then and there intended for the purpose of promoting, aiding and furthering the carrying on of the business of said scheme, and which said circular so far as can be represented and set forth herein, and omitting therefrom certain pictures and designs, was as follows:

"JOVITA'S TWELVE HOUSES.

ATTRACTIVE HOUSES NOW BEING BUILT FOR TWELVE FORTUNATE LOT BUYERS.

Few suburban homes in the Sound country are the equal of Jovita's magnificent $10,000 house, interior views of which are shown herewith. It was built without regard to cost and contains every modern convenience.

There are 12 commodious rooms, and an 8-foot basement extends beneath the entire house. In every bedroom are marble stationary washstands. The plumbing is complete in all respects, and the water pressure is ample.

Bookcases and sideboards are built-in. A number of the bedroom closets are as large as ordinary rooms. The ballroom on the second floor is big enough for pretentious private dances. The pantry and kitchen arrangements are perfect. There is even an automatic fuel-lift from the basement.

This house, together with two acres of ground, is being sold for $130. So are the eleven other brand-new houses now in course of construction, each on a specially sightly lot. Several of the new houses are already completed, and all will be finished this summer. Each one of them is a desirable residence, suitable for the requirements of people of taste.

The company is spending over $30,000 on improvements at Jovita, and all visitors wax enthusiastic over what is being accomplished. Jovita is unquestionably the most attractive suburb between Seattle and Tacoma. It is not remarkable under the circumstances that the sale of Jovita lots is beating all speed records, and it will be only a short time until every one of them is on contract.

JOVITA LAND CO.

Offices

Seattle, Wash.	St. Paul, Minn.
Tacoma, Wash.	Butte, Mont.
Chicago	Fargo, No. Dakota.
Minneapolis, Minn.	Missoula, Mont.

MAIN OFFICE 219-220 Epler Block, SEATTLE, WASH."

and which said circular was contained in a certain sealed envelop, then and there addressed and directed as follows, to-wit:

"Carrie M. Buck,
212 S. Washington St.,
Centralia, Wash."

and upon said envelop in the upper left hand corner thereof, among other things, appeared the words and figures:

"Return in five days to
JOVITA LAND CO.
Main Office
219-220 Epler Block
Seattle, Washington."

and which said scheme hereinbefore referred to was as follows:

That the said W. A. Ridgway and R. E. Glass should acquire in the name of the Jovita Land Company, a corporation, certain vacant, unimproved lands within King County, in the Western District of Washington, which they should plat and cause to be platted into lots and blocks under the name of Jovita; which said lots should be of different and unequal values; and it was further a part of said scheme to build houses of different values upon twelve of said lots, thereby rendering said lots of more value than the other lots which were unimproved by buildings of any kind; and it was a part of said plan of said defendants to offer said lots for sale to persons throughout the United States and to enter into contracts with said purchasers, whereby said lots were to be sold to them for the sum of One Hundred and Thirty ($130.00) Dollars each, but at the time of such sale the lot or lots so purchased should not be identified, but after all of said lots were so sold and contracted to be sold, a drawing should

be had by which said lots should be parceled out to each purchaser by lot and chance, which said drawing was to be conducted on said property under the supervision of said W. A. Ridgway and R. E. Glass and their agents and employees, and that after said drawing, a deed or deeds should be issued to each purchaser conveying to him the lot or lots so drawn by him; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT II.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to-wit: On or about the 12th day of June, 1909, one W. A. Ridgway and one R. E. Glass, at the city of Seattle, County of King, State of Washington, within the Western District of Washington and within the jurisdiction of this court, then and there being, did then and there wilfully, knowingly, unlawfully and feloniously deposit and cause to be deposited in the post office of the United States of America, at said city of Seattle, to be sent and delivered by the post office establishment of the United States, a certain letter concerning a certain scheme dependent upon lot or chance, then and there being operated and conducted within the Western District of Washington by a certain corporation called "Jovita Land Company," and which said letter was then and there intended for the purpose of promoting, aiding and furthering the carrying on of the business of said scheme, and which said letter, omitting the letter head, was in words and figures as follows:

"PAYMENT NO. 4

Seattle, Wash.

M— Carrie M. Buck,
212 S. Washington Ave.,
Centralia, Wash.

The next monthly payment of Ten Dollars on your Jovita Lot will be due on June 16th, 1909, and is payable at our main office, 219 Epler Block, Seattle, Wash.

Kindly remit by check, postoffice money order or express money order. Yours truly,

JOVITA LAND COMPANY."

and which said letter was contained in a certain sealed envelope, then and there addressed and directed as follows, to-wit:

"M— Carrie M. Buck,
212 S. Washington Ave.,
Centralia, Wash."

and upon said envelop in the upper left hand corner thereof, among other things, appeared the words and figures:

"Return in five days to
JOVITA LAND CO.
Main Office
219-220 Epler Block
Seattle, Washington."

and which said scheme was the scheme hereinbefore described in the first count of this indictment, commencing with the words, "That the said W. A. Ridgway and R. E. Glass should acquire" in lines 19 and 20 on page three, to and including the words "conveying to him the lot or lots so drawn by him" in lines 11 and 12, on page 4, of said first count, and said first count within the limits aforesaid is herewith repeated and incorporated in this second count; contrary to the form of the statute in such case made and provided. and against the peace and dignity of the United States of America.

COUNT III.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to-wit: On or about the 2nd day of May, 1910, one W. A. Ridgway and one R. E. Glass, at the city of Seattle, County of King, State of Washington, within the Western District of Washington and within the jurisdiction of this court, then and there being, did then and there wilfully, knowingly, unlawfully and feloniously deposit and cause to be deposited in the post office of the United States of America, at said City of Seattle, to be sent and delivered by the post office establishment of the United States, a certain letter and receipt concerning a certain scheme dependent upon lot or chance, then and there being operated and conducted within the Western District of Washington by a certain corporation called "Jovita Land Company," and which said letter and receipt were

then and there intended for the purpose of promoting aiding and furthering the carrying on of the business of said scheme, and which said letter, omitting the letter head, was in words and figures as follows:

SEATTLE, WASH.
May 2, 1910.

"Mr. Ira C. Luman,
Centralia, Washington.

Dear Sir:

Herewith please find our Final Clearance Receipt No. 1066 in return for your remittance of $10.00 covering last payment on your Jovita lot.

Thanking you, we are,

Yours very truly,

JOVITA LAND COMPANY,
Dict. EP/MP. By E. L. P."

and which receipt, as near as the same can be set out in this indictment, was in words and figures as follows:

"ORIGINAL

JOVITA LAND CO.
Main Office 219-220 Epler Block,
Seattle, Washington.

FINAL CLEARANCE RECEIPT

THIS IS TO CERTIFY That we have received from Ira C. Luman, Centralia, Wash., ONE HUNDRED AND THIRTY DOLLARS ($130.00) in full payment for One Lot in JOVITA, King County, Washington, situated between Seattle and Tacoma on the Puget Sound Electric Ry. Interurban, as purchased by him upon the terms and conditions set forth in his application to purchase same.

Signed JOVITA LAND CO.

No. 1066 May 2, 1910, 190 By R. E. Glass, Manager
R"

and which said scheme was the scheme hereinbefore described in the first count of this indictment, commencing with the words, "That the said W. A. Ridgway and R. E. Glass should acquire" in lines 19 and 20 on page three, to and

including the words, "conveying to him the lot or lots so drawn by him" in lines 11 and 12, on page 4, of said first count, and said first count within the limits aforesaid is herewith repeated and incorporated in this third count; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT IV.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to-wit: On or about the 23rd day of June, 1910, one W. A. Ridgway and one R. E. Glass, at the city of Seattle, county of King, State of Washington, within the Western District of Washington and within the jurisdiction of this court, then and there being, did then and there wilfully, knowingly, unlawfully and feloniously deposit and cause to be deposited in the post office of the United States of America, at said city of Seattle to be sent and delivered by the post office establishment of the United States, a certain letter concerning a certain scheme dependent upon lot or chance, then and there being operated and conducted within the Western District of Washington by a certain corporation called "Jovita Land Company" and which said letter was then and there intended for the purpose of promoting, aiding and furthering the carrying on of the business of said scheme, and which said letter, omitting the letter head, was in words and figures as follows:

"SEATTLE, WASH.
June 20, 1910.

Dear Sir or Madam:

The representative of Jovita lot-buyers from your locality who is to attend the lot buyers meeting at Jovita, Wash., July 1, 1910, is

Geo. D. James,
607 Walnut St.

Herewith you will find a proxy form. You may fill out the proxy and sign it in favor of the above named representative if you are personally unable to attend the meeting. Hand or mail it to him.

Yours very truly,
JOVITA LAND CO.

and which said letter was contained in a certain sealed envelop, then and there addressed and directed as follows, to-wit:

"Mr. Ira C. Luman,
Centralia, Wash."

and upon said envelop in the upper left hand corner thereof, among other things, appeared the words and figures:

"JOVITA LAND CO.
Main Office 219-220 Epler Block
Seattle, Wash."

and which said scheme was the scheme hereinbefore described in the first count of this indictment, commencing with the words "That the said W. A. Ridgway and R. E. Glass should acquire" in lines 19 and 20 on page three, to and including the words "conveying to him the lot or lots so drawn by him" in lines 11 and 12, on page 4, of said first count, and said first count within the limits aforesaid is herewith repeated and incorporated in this fourth count; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT V.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to-wit: On or about the 19th day of April, 1909, one W. A. Ridgway and one R. E. Glass, at the city of Seattle, County of King, State of Washington, within the Western District of Washington and within the jurisdiction of this court, then and there being, did then and there wilfully, knowingly, unlawfully and feloniously deposit and cause to be deposited in the post office of the United States of America, at said city of Seattle, to be sent and delivered by the post office establishment of the United States, a certain receipt concerning a certain scheme dependent upon lot or chance, then and there being operated and conducted within the Western District of Washington by a certain corporation called "Jovita Land Company," and which said receipt was then and there intended for the purpose of promoting, aiding and furthering the carrying on of the business of said scheme, and which said receipt, as near as the same can be set out in this indictment, was in words and figures as follows:

"ORIGINAL

JOVITA LAND CO.
Main Office 219-220 Epler Block
Seattle, Washington.

RECEIPT NO. 2

THIS IS TO CERTIFY That we have received from G. A. Salzer $10.00 as 2nd payment on one lot in Jovita, King County, Washington, situated between Seattle and Tacoma on the Puget Sound Electric Ry. Interurban.

We hereby agree to deliver to said purchaser a Final Clearance Receipt as soon as One Hundred and Thirty Dollars ($130.00) the entire purchase price, shall have been paid in full, as set forth in his application to purchase said lot in Jovita, King County, Washington.

Signed, JOVITA LAND CO.
By R. E. Glass, Manager

Apr 19 1909 190 B Agent."

and which said receipt was contained in a certain sealed envelop, then and there addressed and directed as follows, to-wit:

"Mr. G. A. Salzer,
Centralia, Wash."

and upon said envelop in the upper left hand corner thereof, among other things, appeared the words and figures:

"Return in five days to
JOVITA LAND CO.
Main Office
219-220 Epler Block
Seattle, Washington."

and which said scheme was the scheme hereinbefore described in the first count of this indictment, commencing with the words, "That the said W. A. Ridgway and R. E. Glass should acquire" in lines 19 and 20 on page three, to and including the words, "conveying to him the lot or lots so drawn by him" in lines 11 and 12, on page 4, of said first count, and said first count within the limits aforesaid is herewith repeated and incorporated in this fifth count; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT VI.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to-wit: On or about the 17th day of March, 1910, one W. A. Ridgway and one R. E. Glass, at the city of Seattle, County of King, State of Washington, within the Western District of Washington and within the jurisdiction of this court, then and there being, did then and there wilfully, knowingly, unlawfully and feloniously deposit and cause to be deposited in the post office of the United States of America, at said city of Seattle, to be sent and delivered by the post office establishment of the United States, a certain letter and receipt concerning a certain scheme dependent upon lot or chance, then and there being operated and conducted within the Western District of Washington by a certain corporation called "Jovita Land Company" and which said letter and receipt were then and there intended for the purpose of promoting, aiding and furthering the carrying on of the business of said scheme, and which said letter, omitting the letter head, was in words and figures as follows:

"SEATTLE, WASH.

Mr. G. A. Salzer, Mar. 17, 1910.
Centralia, Wash.

Dear Sir:—

Herewith please find our Final Clearance Receipt No. 479 in return for your remittance of $10.00 covering last payment on your Jovita lot.

We still have a large force of men at work finishing up the improvements at Jovita but just as soon as this work can be completed, will give all of our lot buyers thirty days notice of the exact date on which the property will be turned over to them, and this will be just as much before the furthermost guaranteed date of July 1, 1910, as we can possibly get everything in readiness.

Thanking you, we are,

Yours very truly,

JOVITA LAND CO.

Dict. E/P. By E. L. P"

and which said receipt, as near as the same can be set out in this indictment, was in words and figures as follows:

"Original

JOVITA LAND CO.
Main Office 219-220 Epler Block
Seattle, Washington.

FINAL CLEARANCE RECEIPT

THIS IS TO CERTIFY That we have received from G. A. Salzer, Centralia, Wash., One Hundred and Thirty Dollars ($130.00) in full payment for one lot in Jovita, King County, Washington, situated between Seattle and Tacoma on the Puget Sound Electric Ry. Interurban, as purchased by him upon the terms and conditions set forth in his application to purchase same.

Signed, JOVITA LAND CO.
By R. E. Glass, Manager

No. 479 Mar 17 1910 190 R"

and which said scheme was the scheme hereinbefore described in the first count of this indictment, commencing with the words "That the said W. A. Ridgway and R. E. Glass should acquire" in lines 19 and 20 on page three, to and including the words "conveying to him the lot or lots so drawn by him" in lines 11 and 12, on page 4 of said first count, and said first count within the limits aforesaid is herewith repeated and incorporated in this sixth count; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT VII.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to-wit: On or about the 23rd day of October, 1909, one W. A. Ridgway and one R. E. Glass, at the city of Seattle, County of King, State of Washington, within the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there wilfully, knowingly, unlawfully and feloniously deposit and cause to be deposited in the post office of the United States of America, at said city of Seattle, to be sent and delivered by the post office establishment of the United States, a certain letter concerning a certain scheme dependent upon lot or chance, then and there being operated and conducted within the Western

District of Washington, by a certain corporation called "Jovita Land Company," and which said letter was then and there intended for the purpose of promoting, aiding and furthering the carrying on of the business of said scheme, and which said letter, omitting the letter head, was in words and figures as follows:

"SEATTLE, WASH.
Oct. 23, 1909.

MESSRS. Geo. SPEICHER & H. GIESY,
Menlo, Wash.

Dear Sirs:—

Your valued application of Oct. 21st and first payment of $10.00 of a lot in Jovita has been duly received at this office through Mr. V. M. Bullard. We will mail all communications regarding same to you C/o Mr. R. V. McCash, according to instructions from Mr. Bullard.

The unusual advantages afforded at Jovita have undoubtedly been explained to you, but we might add that a better real estate proposition is not being offered anywhere in this Sound country for the amount of money involved, and the improvements we are putting on this property are increasing its value every day. We have a large force of men at work at the present time and are making rapid progress with our improvements.

Yours very truly,

JOVITA LAND COMPANY,

Dict. E/P. By E. P."

and which said scheme was the scheme hereinbefore described in the first count of this indictment, commencing with the words, "That the said W. A. Ridgway and R. E. Glass should acquire," in lines 19 and 20 on page three, to and including the words "conveying to him the lot or lots so drawn by him" in lines 11 and 12 on page 4, of said first count, and said first count within the limits aforesaid is herewith repeated and incorporated in this seventh count; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT VIII.

And the grand jurors aforesaid, upon their oaths aforesaid do further present:

That heretofore, to-wit: On or about the 8th day of August, 1910, one W. A. Ridgway and one R. E. Glass, at the city of Tacoma, County of Pierce, State of Washington, within the Western District of Washington and within the jurisdiction of this court, then and there being, did then and there wilfully, knowingly, unlawfully and feloniously deposit and cause to be deposited in the post office of the United States of America, at said city of Tacoma, to be sent and delivered by the post office establishment of the United States, a certain letter concerning a certain scheme dependent upon lot or chance, then and there being operated and conducted within the Western District of Washington, by a certain corporation called "Jovita Land Company," and which said letter was then and there intended for the purpose of promoting, aiding and furthering the carrying on of the business of said scheme, and which said letter, omitting the letter head, was in words and figures as follows:

"154

Payments Nos. 9, 10, 11 & 12 delinquent.

Payment No. 13

Tacoma, Wash., August 8th

Mr. John Simmons,
Box 198, Route 1,
Puyallup, Wash'n.

The next monthly payment of Ten Dollars on your Jovita lot will be due on August 10th, and is payable at our main office, 306-307 Bankers Trust Bldg., Tacoma, Wash.

Kindly remit by check, postoffice money order, or express money order.

Yours truly,

JOVITA LAND COMPANY.

Please return this notice
with your remittance."

and which said letter was contained in a certain sealed envelop then and there addressed and directed as follows, to-wit:

"Mr. John Simmons,
Box 198, Route 1,
Puyallup, Wash'n."

and upon said envelop in the upper left hand corner thereof, among other things, appeared the words and figures:

"JOVITA LAND CO.
306-307 Bankers Trust Bldg.
Tacoma, Wash."

and which said scheme was the scheme hereinbefore described in the first count of this indictment, commencing with the words, "That the said W. A. Ridgway and R. E. Glass should acquire" in lines 19 and 20 on page three, to and including the words, "conveying to him the lot or lots so drawn by him" in lines 11 and 12, on page 4, of said first count, and said first count within the limits aforesaid is herewith repeated and incorporated in this eighth count; contrary to the form of statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT IX.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to-wit On or about the 8th day of July, 1910, one W. A. Ridgway and one R. E. Glass, at the city of Seattle, County of King, State of Washington, within the Western District of Washington and within the jurisdiction of this court, then and there being, did then and there wilfully, knowingly, unlawfully and feloniously deposit and cause to be deposited in the post office of the United States of America, at said city of Seattle, to be sent and delivered by the post office establishment of the United States, a certain letter concerning a certain scheme dependent upon lot or chance, then and there being operated and conducted within the Western District of Washington, by a certain corporation called "Jovita Land Company," and which letter was then and there intended for the purpose of promoting, aiding and furthering the carrying on of the business of said scheme, and which said letter, omitting the letter head, was in words and figures as follows:

"SEATTLE, WASHINGTON.
July 5, 1910.

"Mr. John Simmons,
Puyallup, Wash.

Dear Sir:—

The Trustees of the Jovita lot-buyers awarded you Lot 25 Block 83 in Jovita, at the meeting of Jovita lot-buyers held on the property July 1, 1910.

You may continue to pay at the rate of $10.00 a month, and will receive your deed and abstract as soon as you complete the thirteen payments.

Or if you care to pay the balance due, the deed and abstract will come forward to you by return mail.

Plats of the property are made a part of every abstract of title, so every lot buyer will receive one.

Yours very truly,

JOVITA LAND COMPANY."

and which said letter was contained in a certain sealed envelop then and there addressed and directed as follows, to-wit:

"Mr. John Simmons,
Box 198, Route 1,
Puyallup, Wn."

and upon said envelop in the upper left hand corner thereof, among other things, appeared the words and figures:

"JOVITA LAND CO.
Main Office, 219-220 Epler Block,
Seattle, Wash."

and which said scheme was the scheme hereinbefore described in the first count of this indictment, commencing with the words "That the said W. A. Ridgway and R. E. Glass should acquire" in lines 19 and 20 on page three, to and including the words "conveying to him the lot or lots so drawn by him" in lines 11 and 12, on page 4, of said first count, and said first count within the limits aforesaid is herewith repeated and incorporated in this ninth count; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT X.

And the grand jurors aforesaid, upon their oaths aforesaid, do furtehr present:

That heretofore, to-wit: On or about the 14th day of April, 1910, one W. A. Ridgway and one R. E. Glass, at the city of Tacoma, County of Pierce, State of Washington, within the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there wilfully, knowingly, unlawfully and feloniously deposit and cause to be deposited in the post office of the United States of America, at said city of Tacoma, to be sent and delivered by the post office establishment of the United States, a certain letter concerning a certain scheme dependent upon lot or chance, then and there being operated and conducted within the Western District of Washington, by a certain corporation called "Jovita Land Company," and which letter was then and there intended for the purpose of promoting, aiding, and furthering the carrying on of the business of said scheme, and which letter, omitting the letter head, was in words and figures as follows:

"Tacoma, Washington, April 14, 1910.

Dear Sir:

The improvements on the Jovita townsite, as agreed between the Jovita Land Company and its contract holders, are now nearing completion.

The Jovita property will be turned over to the lot buyers on or before July 1st, 1910, with free warranty deeds and abstracts of title for each lot and tract.

The Company has spent $45,000.00 on improvements up to date, and will have all of the improvements completed within sixty days. A large force of men and teams have been constantly employed at this work for fourteen months.

All lot buyers will be given thirty days notice of the exact date of the meeting, which will be held at Jovita, Washington.

Yours very truly,

JOVITA LAND COMPANY,

By R. E. Glass."

and which said letter was contained in a certain sealed envelop then and there addressed and directed as follows, to-wit:

"Mr. John Simmons,
2832 East I St.,
Tacoma."

and upon said envelop in the upper left hand corner thereof, among other things, appeared the words and figures:

"JOVITA LAND CO.
306-307 Bankers Trust Bldg.,
Tacoma, Wash."

and which said scheme was the scheme hereinbefore described in the first count of this indictment, commencing with the words, "That the said W. A. Ridgway and R. E. Glass should acquire" in lines 19 and 20 on page three, to and including the words "conveying to him the lot or lots so drawn by him" in lines 11 and 12, on page 4, of said first count, and said first count within the limits aforesaid is herewith repeated and incorporated in this tenth count; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

W. G. McLAREN,
United States Attorney.

Witnesses examined before grand jury:

G. A. Salzer, Geo. D. James, Carrie M. Buck; Ira Luman, Geo. Speicher.

(Endorsed): Indictment for Vio. Section 213 Penal Code. A True Bill. Clarence Hanford, Foreman Grand Jury. Filed May 20th, 1912. A. W. Engle, Clerk. F. A. Simpkins, Deputy. Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and filed in the U. S. District Court, May 20, 1912. A. W. Engle, Clerk. By F. A. Simpkins, Deputy.

United States District Court, Western District of Washington, Northern Division.

No. 2168

United States of America, Plaintiff,

vs.

W. A. Ridgway and R. E. Glass, Defendants.

DEMURRER TO INDICTMENT

Now comes W. A. Ridgway and R. E. Glass in their own proper person in Court, and say:

I.

(a) That said indictment and the matters and things contained in Count I thereof, and in said Count contained in the manner and form as the same are therein stated and set forth, are not sufficient in law, and that they, the said W. A. Ridgway and R. E. Glass are not bound by the law of the land to answer the same, and this they are ready to verify:

(b) That said indictment on said count was not found nor the prosecution instituted within three years next after said offence is alleged to have been committed.

II.

That said indictment and the matters and things contained in Count II thereof and in said Count contained in the manner and form as the same are therein stated and set forth, are not sufficient in law, and that they, the said W. A. Ridgway and R. E. Glass, are not bound by the law of the land to answer the same, and this they are ready to verify.

III.

That said indictment and the matters and things contained in Count III thereof and in said Count contained in the manner and form as the same are therein stated and set forth, are not sufficient in law, and that they, the said W. A. Ridgway and R. E. Glass, are not bound by the

law of the land to answer the same, and this they are ready to verify.

IV.

That said indictment and the matters and things contained in Count IV thereof and in said Count contained in the manner and form as the same are therein stated and set forth, are not sufficient in law, and that they, the said W. A. Ridgway and R. E. Glass, are not bound by the law of the land to answer the same, and this they are ready to verify.

V.

(a) That said indictment and the matters and things contained in Count V thereof and in said Count contained in the manner and form as the same are therein stated and set forth, are not sufficient in law, and that they, the said W. A. Ridgway and R. E. Glass, are not bound by the law of the land to answer the same, and this they are ready to verify;

(b) That said indictment on said count was not found nor the prosecution instituted within three years next after said offense is alleged to have been committed.

VI.

That said indictment and the matters and things contained in Count VI thereof and in said Count contained in the manner and form as the same are therein stated and set forth, are not sufficient in law, and that they, the said W. A. Ridgeway and R. E. Glass are not bound by the law of the land to answer the same, and this they are ready to verify.

VII.

That said indictment and the matters and things contained in Count VI thereof and in said Count contained in the manner and form as the same are therein stated and set forth, are not sufficient in law, and that they, the said W. A. Ridgway and R. E. Glass are not bound by the law of the land to answer the same, and this they are ready to verify.

VIII.

That said indictment and the matters and things contained in Count VIII thereof and in said Count contained in the manner and form as the same are therein stated and set forth, are not sufficient in law and that they, the said W. A. Ridgway and R. E. Glass, are not bound by the law of the land to answer the same, and this they are ready to verify.

IX.

That said indictment and the matters and things contained in Count IX thereof and in said Count contained in the manner and form as the same are therein stated and set forth, are not sufficient in law and that they, the said W. A. Ridgway and R. E. Glass, are not bound by the law of the land to answer the same, and this they are ready to verify.

X.

That said indictment and the matters and things contained in Count X thereof and in said Count contained in the manner and form as the same are therein stated and set forth, are not sufficient in law, and that they, the said W. A. Ridgway and R. E. Glass, are not bound by the law of the land to answer the same, and this they are ready to verify.

WHEREFORE, for want of sufficient indictment in this behalf, the said W. A. Ridgway and R. E. Glass pray judgment and that by the Court they may be dismissed and discharged from each and every of the counts of said indictment aforesaid, and from said indictment and from said premises in the said indictment and the several counts thereof specified.

KERR & McCORD,
HAMMOND & HAMMOND,
Attorneys for Defendants.

Service of within Demurrer and receipt of copy admitted this 25th day of June, 1912. M. G. McLaren, Attorney for Plaintiff.

Indorsed: Demurrer. Filed in the U. S. District Court, Western District of Washington, June 27, 1912, A. W. Engle, Clerk. By S., Deputy.

In the District Court of the United States, Western District of Washington, Northern Division.

Nos. 2168 and 2169. Opinion on Demurrers.

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

This matter is now before the court upon demurrers to the indictments in the above numbered causes.

The first count of the indictment in cause No. 2169, is as follows, to-wit:—

"That heretofore, to-wit: On or about the 9th day of April, 1910, one W. A. Ridgway and one R. E. Glass, at the city of Seattle, County of King, State of Washington, within the Western District of Washington and within the jurisdiction of this court, then and there being, did then and there wilfully, knowingly, unlawfully and feloniously deposit and cause to be deposited in the post office in the United States of America, at said City of Seattle, to be sent and delivered by the post office establishment of the United States, a certain letter and circular concerning a certain scheme dependent upon lot or chance, then and there being operated and conducted within the Western District of Washington by a certain corporation called "Jovita Heights Company", and which said letter and circular were then and there intended for the purpose of promoting, aiding and furthering the carrying on of the business of said scheme, and which said letter, omitting the letter head, was in words and figures as follows: * * * and which said letter and circular were contained in a certain sealed envelop, then and there addressed and directed as follows, to-wit: * * *.

"That the said W. A. Ridgway and R. E. Glass should acquire in the name of the Jovita Heights Company, a corporation, certain vacant, unimproved lands within King County in the Western District of Washington, which they should plat and cause to be platted into lots and blocks under the name of Jovita Heights; which said lots should be of different and unequal values; and it was further a part of said scheme to build houses of different values upon twenty-four of said lots thereby rendering said lots of more value

than the other lots which were unimproved by buildings of any kind; and it was a part of said plan of said defendants to offer said lots for sale to persons throughout the United States and to enter into contracts with said purchasers, whereby said lots were to be sold to them for the sum of One Hundred and Forty ($140.00) Dollars each, but at the time of such sale the lot or lots so purchased should not be identified, but after all of said lots were so sold and contracted to be sold, a drawing should be had by which said lots should be parceled out to each purchaser by lot and chance, which said drawing was to be conducted on said property under the supervision of said W. A. Ridgway and R. E. Glass and their agents and employees, and that after said drawing, a deed or deeds should be issued to each purchaser conveying to him the lot or lots so drawn by him; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America."

The other counts are of similar import, but are based upon and describe different letters and circulars as the subject matter of the mailing. There are eleven counts in the indictment in cause No. 2169 and ten counts in indictment No. 2168.

The indictments not only embrace charges of violations of Section 3894 R S., but of Section 213 of the Criminal Code of 1910. The plaintiff admits that prosecution for any offenses charged in counts I to V in indictment No. 2168 is now barred by the Statute of Limitations.

The first point urged in defendants' demurrer is that the only count in this indictment which sets forth and describes the "scheme" is the first count. The other counts incorporating the allegations describing the "scheme" by reference to the first count, and the first count being barred by the statute, the others fall with it.

This position cannot be sustained.

"One count may refer to matter in a previous count, so as to avoid unnecessary repetition; and if the previous count be defective or is rejected, that circumstance will not vitiate the remaining counts, if the reference be sufficiently full to incorporate the matter coming before with that in the count in which the reference is made. Litz v. U. S., 153 U. S. 308-317."

Crain vs. U. S., 162 U. S., 625.
40 Law Edition, 1097-1099.

It is further urged that the indictments are demurable for the reason that there is an improper joinder of offenses in that counts I., II., V. and VII. of indictment 2168 are under Section 3894 R. S., providing a maximum imprisonment of one year and the remainder of said counts are under Section 213 of the Criminal Code, providing a maximum imprisonment of two years, it being contended that a felony and misdemeanor cannot be joined in the same indictment.

Section 213 of the Criminal Code of 1910 supersedes Section 3894 of the Revised Statutes. They treat of the same offenses, to-wit: Using the mails in furtherance of a lottery or similar scheme. Section 213 is somewhat more comprehensive than Section 3894. The offenses described are not only of the same class, but they cover the same ground.

Section 1024 of the Revised Statutes provides:—

"Where there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, *or for two or more acts or transactions of the same class of offenses or crimes, which may be* properly joined, instead of having several indictment, the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated."

See also,

Encyc. Pl. and Pr., vol. 10, p. 550.
22 *Cyc.,* 402 and cases cited.

Supporting the text of the latter, U. S. v. Spintz is cited, 18 Fed., 277, in which decision it is said:—

"Counts in an indictment under Sections 3922 and 3924 Revised Statutes may be properly joined under Section 1024, although the former be a misdemeanor and the latter a felony."

The next objection made is that there is no sufficient sienter; that it is not charged that the defendants knew that the letter deposited was concerning a "scheme" offering prizes. A demurrer was, by this court, sustained to a former indictment against these parties which charged that the defendants "did then and there wilfully, knowingly, unlawfully and feloniously deposit and cause to be deposited

in the post office of the United States of America a certain sealed envelop * * * and contained within said envelop was a letter''—the court holding that this was not a sufficient allegation that the leter was knowingly mailed.

The charge in the present indictment is that the defendants ''did then and there wilfully, knowingly, unlawfully and feloniously deposit * * * a certain letter and circular concerning a certain scheme''. This is a sufficient charge that the defendants knew that the letter deposited by them concerned the scheme and, as it is chargd that the defendants devised this scheme, it cannot but be presumed that they knew its nature.

It is further objected that the indictment falls short of charging the necessary sienter in another particular. That portion of the statute involved in this case—Section 213 of the Criminal Code of 1910—condemns the sending of a letter concerning ''a lottery * * * or similar scheme offering prizes, dependent in whole or in part upon lot or chance.'' Section 3894 reads ''other similar enterprise offering prizes, dependent upon lot or chance.''

In the opening of each count of the indictments, the defendants are charged with having knowingly deposited in the post office a letter ''concerning a certain scheme dependent upon lot or chance.''

The objection made is that the language does not cover the statute; that ''a scheme dependent upon lot or chance'' is not ''a scheme offering prizes dependent upon lot or chance.'' If the language quoted is unaided by any other language in the indictments, the objection is good and the indictments are defective; but the first count closes as follows: ''and which said certain scheme hereinbefore referred to was as follows:— * * *''—then proceeds to describe the scheme as above set out. The counts other than the first conclude:—''and which said scheme was the scheme hereinbefore described in the first count of this indictment, commencing with the words * * *.''

With this express reference to the ''scheme'' mentioned in the last part of each count, it will be sufficient to cure the loose language used in the beginning of the count, provided the scheme described in closing the count is one ''offering prizes dependent in whole or in part upon lot or chance.''

This brings us to the final objection urged by the defendant, which is decisive of both questions, that is:—It is

contended that, in the "scheme" as described, no prizes are offered dependent upon lot or chance.

By the indictment above quoted it is charged that the lands to be acquired by the defendants were to be platted and the lots were to be of unequal value, and, upon a certain number of them, houses were to be erected, rendering the inequality in value still greater. The lots were to be then sold at One Hundred Forty Dollars each; but the lot secured was not to be known or identified at the time of the purchase. After all were sold, there was to be a drawing, under the supervision of the defendants, but which the lots were to be parcelled out by lot or chance to each purchaser and thereafter deeded to each, in accordance with the drawing.

This arrangement was, certainly, a scheme similar in all respects to a lottery. If, in place of lots of land, there were to be taken a large number of envelops, mostly empty, but into twenty-four of which money was placed and chances on the drawing of the envelops sold at One Dollar a chance, the fact that it was such would be more clearly apparent; but the principle of the scheme would be the same.

It may be, as contended by counsel for defendants, that, after the purchase of lots, there is no law against the owners apportioning the property by drawing lots. Among other cases cited, as supporting the demurrer, is that of the Clancy Park Land Co. vs. Hart, 73 N. W., 1059. In that case the court expressly pointed out that,

"without a scheme or plan to distribute by chance on the part of the promoters, the vital part of the lottery was lacking."

In the case at bar, it is charged that there was such a scheme on the part of the promoters, the defendants—a scheme not devised after the purchase of the property in common, to identify and segregate the holdings of the owners, but a scheme devised in advance, presumably to stimulate the gambling instinct and induce the buyers to take a hazard, in hopes of a reward largely in excess of the investment.

The demurrers are overruled, save as to counts I. to V. above indicated.

EDWARD E. CUSHMAN,
District Judge.

Indorsed: Opinion on Demurrers. Filed in the U. S. District Court, Western Dist. of Washington, Aug. 15, 1912. A. W. Engle, Clerk. By S., Deputy.

United States District Court, Western District of Washington, Northern Division.

No. 2168. Order.

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

The above entitled matter having heretofore come regularly on for hearing on the Demurrer of the defendants to the indictment, the Court having heretofore filed its written opinion on said demurrer, and said opinion containing an obvious clerical error on page 2 thereof, wherein it is stated that the plaintiff admits the prosecution for the offenses charged in counts one "to" five, as barred by the statute of limitations, whereas it plainly appears from the files only counts one and five were barred by the Statute, or admitted to be so barred, and the opinion stating that the demurrer should be overruled as to all other matters, and no formal order having been heretofore entered, now therefore,

IT IS HEREBY ORDERED, That said demurrer be and the same hereby is overruled as to all the counts therein, except counts one and five, and that the said demurrer be sustained as to counts one and five, and that an exception be allowed the defendants, and each of them, to the overruling of said demurrer to each of said counts as to which it is so overruled.

Dated this 17th day of June, 1913.

EDWARD E. CUSHMAN,
Judge.

Indorsed : Order Filed in the U. S. District Court Western District of Washington, June 17, 1913. Frank L. Crosby, Clerk. By E. M. Lakin, Deputy.

In the District Court of the United States for the Western District of Washington. Northern Division.

No. 2168

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

ARRAIGNMENT AND PLEA

Now on this day into open Court comes the said defendants W. A. Ridgway and R. E. Glass for arraignment, and being asked if the names by which they are indicated are their true names, each replies, "It it." Whereupon the reading of the indictment is waived and both defendants here and now enter their plea of not guilty to the charge in the indictment herein against them, Earl B. Brockway appearing for the Plaintiff and Kerr & McCord and Hammond & Hammond appearing for the defendants.

Dated June 19, 1913.

Journal 3. Page 170. U. S. District Court.

In the District Court of the United States for the Western District of Washington. Northern Division.

No. 2168

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

VERDICT

We, the jury in the above entitled cause find the Defendant

W. A. Ridgway is guilty of Count II.
W. A. Ridgway is guilty of Count III.
W. A. Ridgway is guilty of Count IV.
W. A. Ridgway not guilty of Count VI.
W. A. Ridgway is guilty of Count VII.

W. A. Ridgway not guilty of Count VIII.
W. A. Ridgway not guilty of Count X.

AND

R. E. Glass is guilty of Count II.
R. E. Glass is guilty of Count III.
R. E. Glass is guilty of Count IV.
R. E. Glass not guilty of Count VI.
R. E. Glass is guilty of Count VII.
R. E. Glass not guilty of Count VIII.
R. E. Glass not guilty of Count X.

Jacob Anthes, Foreman.

Indorsed: Verdict. Filed in the U. S. District Court, Western Dist. of Washington, Dec. 24, 1913. Frank L. Crosby, Clerk. By E. M. L. Deputy.

In the District Court of the United States for the Western District of Washington. Northern Division.

No. 2168

United States of America, Plaintiff,
vs.
W. A. Ridgway and R. E. Glass, Defendants.

SENTENCE OF R. E. GLASS

Comes now on this 27th day of December, 1913, the said Defendant R. E. Glass, into open Court for sentence, and being informed by the Court of the indictment herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, he nothing says save as he before hath said.

Wherefore, by reason of the law and the premises, it is considered by the Court, that the said Defendant, R. E. Glass, be punished by being imprisoned in the King County Jail, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States, for the term of sixty days on each count, each sentence to run concurrently in all counts, at hard labor, from and after this date. And that he pay a fine of $300.00 on each count, totaling $1,200.00, and

that execution issue therefor, and that he be further imprisoned in the said King County Jail until such fine is paid, or until he shall be otherwise discharged by due process of law.

And the said Defendant, R. E. Glass, is now hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Judgment & Decree Book 1, Page 392.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2168

United States of America, Plaintiff,

vs.

W. A. Ridgway and R. E. Glass, Defendants.

SUPERSEDEAS BOND OF R. E. GLASS

KNOW ALL MEN BY THESE PRESENTS: That we, R. E. Glass, as Principal, and C. J. Gerald and E. M. Brouillette, as sureties, are held, and firmly bound unto the United States of America, in the full and just sum of Thirty Five Hundred and no/100 ($3,500.00) Dollars, to be paid to the said United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals, and dated this 27th day of December, A. D. 1913.

THE CONDITION of this obligation is such; that

WHEREAS, Lately in the District Court of the United States for the Western District of Washington, Northern Division, in a suit pending in such court between the said United States of America as Plaintiff, and the said R. E. Glass as Defendant a judgment was rendered against the said R. E. Glass, and the said R. E. Glass having obtained a Writ of Error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a Citation directed to Clay Allen, as United States District Attorney in the above entitled cause, citing

and admonishing him to be and appear at a session of the Circuit Court of Appeals of the United States for the Ninth Circuit, to be holden at the City of San Francisco on the 4th day of May, next.

NOW THEREFORE, if the said R. E. Glass shall prosecute the said Writ of Error to effect, and shall abide the decree and judgment of the Circuit Court of Appeals and any and all further orders and judgment entered herein, and shall pay the fine imposed by the Court in case said judgment is affirmed by said Circuit Court of Appeals, then the above obligation to be void, else to remain in full force and effect.

R. E. Glass.....Seal
Principal.
C. J. Gerald.....Seal
Surety.
E. M. Brouillette.....Seal
Surety.

O. K.
Allen, Atty. for plaintiff.

Approved 12/27/13.

Jeremiah Neterer,
Judge.

United States of America, Western District of Washington, Northern Division: ss.

C. J. Gerald and E. M. Brouillette each being first duly sworn, each on oath for himself does say:

I am a resident of King County, Washington, and am worth the sum of Thirty Five Hundred Dollars ($3500.00) in property within this State, over and above all debts and liabilities and exclusive of property exempt from execution.

C. J. Gerald
(SEAL) E. M. Brouillette.

Subscribed and sworn to before me this 27th day of December, A. D. 1913. Ed. M. Lakin, Deputy Clerk U. S. District Court Western Dist. of Washington.

Indorsed: Supersedeas Bond of R. E. Glass Filed in the U. S. Dist. Court Western District of Washington, Northern Division Dec. 27, 1913. Frank L. Crosby, Clerk, by E. M. L. Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

No. 2168

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

SUMMONS AND SEVERANCE.

To W. A. RIDGWAY and J. A. KERR, his Attorney:

You are hereby invited to join with me, on or before the 4th day of February, A. D. 1914, to prosecute a Writ of Error in the above entitled cause, returnable to the United States Circuit Court for the Ninth Circuit, to reverse the judgment in the above entitled cause rendered against us jointly, on the 24th day of December, A. D. 1913, or you will be deemed to have acquiesced in the said judgment, and I shall prosecute said Writ of Error without joining you as a party.

R. E. Glass.
By F. E. Hammond,
His Attorney.

Service of the above is accepted this 15th day of January, A. D. 1914.

W. A. Ridgway
By Kerr & McCord,
His Attoreny.

Indorsed: Summons and severance. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 16, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

No. 2168

United States of America, Plaintiff,

vs.

W. A. Ridgway and R. E. Glass, Defendants.

AT LAW. PETITION FOR WRIT OF ERROR.

To the Honorable Jeremiah Neterer, Judge of the United States District Court for the Western District of Washington, Northern Division:

Comes now the above named defendant and petitioner, R. E. Glass, by his Attorney, F. E. Hammond, and respectfully shows:

That on the 24th day of December, A. D. 1913, a jury, duly empaneled in the above numbered and entitled cause, found a verdict of guilty against your petitioner, on the charge made against him in the Second, Third, Fourth and Seventh counts in the indictment on file herein; That thereafter, on to-wit: the 27th day of December, A. D. 1913, final judgment was made and entered herein, whereby it was adjudged that your petitioner, pay a fine of Three Hundred ($300.00) Dollars upon each of said four counts in said indictment, and serve a term of sixty (60) days upon each of said four counts, in the County Jail of King County, Washington, said jail sentence to be served concurrently.

That on said judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of your petitioner, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Your petitioner, feeling himself aggrieved by said verdict and judgment entered thereon as aforesaid, herewith petitions this Honorable Court for an order allowing him to prosecute a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, under the laws of the State of Washington in such cases made and provided.

WHEREFORE, Your petitioner prays that a Writ of Error issue in this behalf to the United States Circuit Court of Appeals for the Ninth Circuit aforesaid, sitting at San Francisco, California, in said Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

F. E. Hammond.

Attorney for Petitioner in Error, R. E. Glass.

Service of copy of the foregoing petition is hereby admitted this 16th day of Feb., A. D. 1914.

Clay Allen,
United States District Attorney.

Indorsed: Petition for Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 16, 1914, Frank L. Crosby, Clerk. By E. M. L. Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

No. 2168

United States of America, Plaintiff,

vs.

W. A. Ridgway and R. E. Glass, Defendants.

ASSIGNMENTS OF ERROR.

Comes now the above named defendant, R. E. Glass, by his Attorney, and in connection with his petition for writ of error herein, makes the following assignments of error, and particularly specifies the following as the errors upon which he will rely and which he will urge upon the prosecution of his said writ of error in the above numbered and entitled cause, and which he avers are shown in the record, proceedings and judgment in the above entitled cause, and which occurred upon the hearing and trial thereof, to-wit:

THE COURT ERRED:

I.

In overruling the demurrer of said defendants to the indictment filed against them in this couse.

II.

In holding and deciding over the objections of said defendants, that said indictment states facts sufficient to constitute a crime or offense against the United States or the laws thereof.

III.

In holding and deciding over the objections of said defendants, that the several counts of said indictment, or that any of said counts states facts sufficient to constitute a crime or offense against the United States or the laws thereof.

IV.

In holding and deciding over the objections of said defendants, that said indictment was sufficient in law.

V.

In holding and deciding over the objections of said defendants, that counts 2, 3, 4, 6, 7, 8, 9 and 10 of said indictment were sufficient in law, and in holding that any of said counts were sufficient in law.

VI.

In holding and deciding over the objection of said defendants, that said indictment was sufficient as a matter of law to permit the introduction of evidence thereunder against said defendants, and permitting over the objections of said defendants, evidence to be introduced thereunder against said defendants as to counts 3 and 4, after the introduction of evidence as to count 2 of said indictment.

VII.

In overruling the objections of said defendants to the introduction of evidence, and in admitting in evidence, over the objections of said defendants, plaintiff's Exhibit No. 23, purporting to be a letter from the Jovita Land Company to Carrie M. Buck, and being the letter mentioned in

plaintiff's count 2 as having been unlawfully deposited in the United States Post Office Establishment, contrary to law; said letter being in words, letters and figures as follows, to-wit:

"Payment No. 4 Seattle, Wash.,

M— Carrie M. Buck,
212 S. Washington Ave.,
Centralia, Wash.

The next monthly payment of Ten Dollars on your Jovita Lot will be due on June 16th, 1909 and is payable at our Main Office, 219 Epler Block, Seattle, Wash.

Kindly remit by check, postoffice money order or express money order.

Yours truly,

JOVITA LAND COMPANY."

VIII.

In overruling the objections of said defendants to the introduction in evidence and admitting in evidence, over the objections of said defendants, plaintiff's Exhibit No. 63, the same having been offered after the introduction in evidence of Exhibit No. 23 and Exhibit No. 25; said Exhibits No. 23 and No. 25 being letters alleged to have been deposited in the United States Post Office Establishment, contrary to law, and set forth in the indictment as counts 2 and 7 respectively, said counts 2 and 7 being founded upon the law as in force prior to January 1st, 1910, and count 3 of said indictment being founded upon the law as in force after January 1st, 1910. Said Exhibit No. 63 purporting to be a letter and receipt from the Jovita Land Company, and being the letter and receipt set forth in count 3 of the indictment, as having been unlawfully deposited in the Post Office Establishment of the United States.

IX.

In overruling the objections of said defendants to the introduction in evidence and admitting in evidence over the objections of said defendants, of plaintiff's Exhibit No. 25, the same purporting to be a letter from the Jovita Land Company to George Spicher and H. Geisy, and being the letter set forth in count 7 of said Indictment, and

alleged to have been unlawfully deposited in the Post Office Establishment of the United States.

X.

In overruling the objections of said defendants to the introduction in evidence and admitting in evidence over the objections of said defendants, plaintiff's Exhibit No. 60, the same purporting to be a letter from the Jovita Land Company, bearing no address, but alleged to have been contained in an envelope addressed to Ira G. Luman, said Exhibit No. 60 being set forth in count 4 of the indictment, and alleged to have been unlawfully deposited in the Post Office Establishment of the United States.

XI.

In giving the following as part of its instructions:

"In such case, the defendants being parties thereto, cannot excuse themselves from the criminality of their acts by turning over the property and withdrawing from further participation before the drawing actually took place. In other words, it is not a controlling consideration that deeds had been executed to all this property with the grantee left blank and handed to a trustee before the drawing, and that the defendants took no part in such drawing."

XII.

In giving the following as part of its instructions:

"If the defendants devised this scheme for the distribution of the property for the purpose, and with the intention and understanding that people would be attracted by it and would be induced to purchase interests or shares for the reasons among other things that in the drawing by resort to lot at which every contractor or shareholder would have a chance to draw a more valuable piece of property, as well as a smaller piece of property, if you find beyond a reasonable dout that they did devise and further such plan for such a purpose, and with such intent and understanding, and that such scheme was that described in the indictment, then you may find that they were engaged in a lottery or a similar scheme of offering prizes dependent in whole or in part upon lot or chance; even though you find they contemplated withdrawing and

did actually withdraw from participation in the enterprize before the drawing was held, and that they took no part in the drawing."

XIII.

In giving the following as part of its instructions:

"You are further instructed in this connection that every sane person is presumed to intend the natural and logical consequences of his voluntary act; that is, if the defendants or either of them, in the conduct of this service must have contemplated that the United States mail would have to be used in the correspondence with the contracting parties for the purchase of an interest in this land, and that their, or either of their employees under general directions sent out this mail matter as that is described in the indictment, then you would be justified in finding, if the evidence is sufficient to convince you beyond a reasonable doubt, that they did cause those things to be mailed, although they did not direct any one particular piece of mail to be sent to a particular addressee."

XIV.

In giving the following as part of its instructions:

"If you find that they were trustees in the Jovita Land Company, and executive and managing heads, and exercised an active supervision and control over the corporation's affairs, they would be responsible for any general directions given in relation to the mailing of literature, whether they personally gave the directions to mail or not."

XV.

In giving the following as part of its instructions:

"Were they in good faith simply selling undivided interest in properties of which they were possessed, with no other inducement to purchasers than the value, or supposed value of the property or the merits thereof, or were they in bad faith, and under cover of legal form, knowingly and in reality appealing to the weakness of the passion prevalent in human nature, the gambling spirit, by which many people are easily induced to invest or to risk comparatively small sums upon the chance of winning a prize of much greater value."

XVI.

In giving the following as part of its instructions:

"You are instructed that the law does not, as a rule, permit proof to be given of what one man has said or done in order to affect the matter. One can only be affected by what he has said or done himself. What one has said or done cannot be evidence against another unless he was acting with the other's authority, or in accordance with a plan which was adopted by both the parties which was common to both or all, and in which they ere interested. When a thing which the parties have been doing separately and apart from each other, and in the interest of a common plan or purpose, or if you find that there was a common plan or purpose, can only be explained on the theory that they were acting in pursuance of such plan which they had previously adopted, and which was well understood, it may be found that they had previously adopted the plan disclosed by the evidence and which led to the result as described. One question, therefore, in this case is, whether the acts of the defendants when considered in their relation to one another do fairly and convincingly indicate that they were acting in pursuance of a common plan and purpose, and that the defendants, Glass and Ridgway were acting with relation to such plan, and to the advancement of a common plan and purpose in the advertisement and disposal of the property referred to in the indictment, and concerning which testimony has been received; and if these acts so fit together and match each other that the only reasonable explanation of them is that they were acting for and on behalf of each other and according to a well understood and well defined plan, if you are convinced by the evidence that such is the fact, then you may consider the act or the statement of one in furtherance of such a common plan as you may find, if any, to have been adopted as against the other defendant, whether the other defendant was present at the time of the statement or at the time of the action or not, at the time the statement was made, or at the time that the act was done, or whether they were not."

XVII.

In refusing to give the defendants' proposed Instruction No. 4, which was as follows:

"I instruct you, gentlemen of the jury, that the scheme concerning which the law forbids any letters or circulars to

be deposited in the mails is such a scheme as is similar to a lottery and offering prizes to those who participate in said scheme, the ultimate ownership of which prizes must depend upon lot or chance."

XVIII.

In refusing to give the defendants' proposed Instruction No. 5, which was as follows:

"I instruct you that any number of persons may buy jointly a tract of land in any condition and subsequently divide it among themselves by drawing lots and the persons selling them the land, even though he knew they intended to divide it by a drawing or otherwise, would not commit a crime if he deposited or caused to be deposited any mail matter relative thereto in the Post Office of the United States similar to that set forth in the indictment in this case."

XIX.

In refusing to give the defendants' proposed Instruction No. 6, which was as follows:

"I instruct you that in determining whether there was a lottery or other similar scheme of chance devised or carried out; that where two or more persons who are the owners of undivided lots of land determine or arrange to apportion their respective interests therein among themselves, and the plan of so apportioning or dividing the same is by casting lots and thereby ascertain and apportion to each his interest in severalty by chance or lot, this is not a lottery or similar scheme of chance as contemplated by the law, for, the law contemplates that, in a lottery or other similar scheme, the title to the prize or property has not yet passed to the purchaser or person entitled to the chance and that it is by lottery or similar scheme of chance that the purchasers obtain the property or so called prizes, and the law contemplates that the title, at the time of the lottery or other similar scheme of chance was had or held, was in some other than the purchaser or person taking the chance, and that the right which was held by the parties expecting or seeking prizes was merely a right to participate in the lottery or drawing with the understanding or agreement, express or implied, that, thereafter, there would be conveyed or transferred to him the prize or property which might, by reason of such lottery or similar scheme, fall to him by reason of such drawing or scheme. That in all lotteries, or similar

schemes of chance, as defined by law, there must be some party or parties holding, at the time of the allotment or drawing, the title to the prizes or property to be drawn, other than the persons among whom the prizes are to be awarded by lot or chance."

XX.

In refusing to give defendants' proposed Instruction No. 7, which was as follows:

"You are instructed that at the time the Jovita Land Company delivered deeds to the lots buyers all title to the land, houses and other improvements passed from the Jovita Land Company to the lot buyers and the lot buyers were then the absolute owners and entitled to the possession and control of the property; that thereafter all the lot buyers owned an undivided interest in each and every house or part or parcel of land, which included the alleged prizes alleged to have been offered; that upon the delivery of said deeds all control over the subsequent disposition of said property passed from said Land Company, or these defendants, and any purchaser if he wished could have gone into the State Court and had the land partitioned equitably among them or they had the right to divide it among themselves by lot.

XXI.

In refusing to give defendants' proposed Instruction No. 8, which was as follows:

"You are further instructed that at the time of the execution of each contract of sale of an undivided interest, the purchaser became the owner of an undivided interest in the land, houses and other improvements owned by the Jovita Land Company and as long as the purchaser made his payments the Land Company could not divest him of his title and the purchasers title was as complete in the alleged prizes as in the unimproved land; in other words you are instructed that the purchasers from the time of their purchase at all times owned the alleged prizes as well as the unimproved land and small tracts and these purchasers after obtaining title could lawfully allot their land among themselves as they might agree without any control or interference upon the part of the defendants."

XXII.

In refusing to give defendants' proposed Instruction No. 9, which was as follows:

"You are further instructed that if the said purchasers had refused to allot their land by lot, chance or drawing, the Jovita Land Company could not have compelled them to hold a drawing, nor could the Jovita Land Company have held any drawing or apportionment that would have been binding upon the lot buyers."

XXIII.

In refusing to give defendants' proposed Instruction No. 10, which was as follows:

"This brings you to the consideration of the second question, viz: Did the defendants, Ridgway and Glass, devise a scheme in connection with the sale of the land by which a drawing was to be conducted under their supervision, or that of their authorized agents and employees, as charged by the Government; or did the defendants as claimed by them, simply sell to various and sundry persons undivided interests in the land platted by Jovita Land Company, leaving it to the purchasers themselves to partition said lots among themselves as they saw fit? Contracts of sale for said land have been exhibited to you which it is claimed the Land Company executed, which contracts purported by their terms to sell but an undivided interest in the land platted, and which provided further that the several purchasers should meet and partition the land as they saw fit. These contracts further provide that no selling agent has any power to alter or change their terms. The defendants further deny that they or either of them at any time authorized any agents to vary, change or modify the terms of such contracts, and deny any knowledge that any such agent had ever attempted so to do. The defendants further deny that they or either of them had anything whatever to do with any drawing or the division of said lots, and deny that the plan therefor was their plan, or that they supervised it, or that the same was supervised with their knowledge or consent by any agent or employee of their or of said Land Company.

You are accordingly instructed that if you find that defendants did in good faith sell undivided interests in the property platted by said Land Company, and that the plan

of allotment was not their plan, but a plan adopted and carried into effect by the purchasers for the purpose of partitioning the property among themselves, your verdict must be for the defendants."

XXIV.

In refusing to give defendants' proposed Instruction No. 10½, which was as follows:

"If, however, on the other hand, you should find that there was a lottery scheme offering prizes and that it was the scheme of the defendants, or either of them, and that they or either of them sold the property to the several purchasers in contemplation that the same would be allotted by chance and that thereafter a drawing was held prior to the transfer of title from the Land Company to the purchasers and that the defendants or either of them arranged and supervised such drawing or caused the same to be done, and that in connection with the sale of said property the defendants, or either of them, within three years prior to May 20, 1912, deposited or caused to be deposited in the United States mails letters and circulars as alleged by the Government for the purpose of furthering and aiding such scheme, then I instruct you the defendants would be guilty of the crime charged, and in this connection I instruct you that the delivery of deeds to the authorized representatives of the purchasers would be the same as a delivery of the deeds to the actual purchasers of the lots."

XXV.

In refusing to give defendants' proposed Instruction No. 11, which was as follows:

"I instruct you that unless you can find that the defendants personally deposited the mail matter or directed some one else to do so you must acquit the defendants."

XXVI.

In refusing to give defendants' proposed Instruction No. 12, which was as follows:

"You are instructed that it is not a crime to deposit a letter or circular concerning a lottery that has been held. To illustrate: Suppose a lottery has been held and, in writing a letter to a friend or acquaintance you mention the fact that a lottery has been held; you would in that case not be

violating the law although the letter would be in a sense "concerning a lottery". Nor is it a crime to deposit or cause to be deposited a letter concerning a legitimate allotment of land or property among the owners thereof. To illustrate: If the various owners of a tract of land decide to divide it among themselves by a drawing or a casting of lots, that would be a legitimate allotment or lottery, and it would not be a crime to deposit or cause to be deposited in the Post Office a letter or circular concerning such a lottery or plan even though the letter was one which was promoting the scheme or plan of distribution and the tracts of land to be divided were of unequal value."

XXVII.

In refusing to give defendants' proposed Instruction No. 14, which was as follows:

"I instruct you that the law presumes that the Jovita Land Company and the purchasers intended to carry out their contract in a lawful manner and the government must overcome this presumption by evidence that convinces you beyond a reasonable doubt and it is presumed by law that all parties connected with the sale or purchase of the land believed and contemplated that after the delivery of the deeds the land would be partitioned among them in a legitimate manner."

XXVIII.

In refusing to give defendants' proposed Instruction No. 18, which was as follows:

"I instruct you that the mere fact that these defendants were officers of the corporation known as the Jovita Land Company is not of itself sufficient to prove that they knew that there was in existence a scheme similar to lottery, being conducted by the Jovita Land Company, nor is it sufficient to prove that they deposited or caused to be deposited the letters or circulars set forth in the indictment."

XXIX.

In refusing to give defendants' proposed Instruction No. 19, which was as follows:

"The mere reception of the matter, alleged to have been deposited in the mail, by the person to whom it was addressed, would not of itself establish the fact that defend-

ants deposited or caused to be deposited, such matter in the mails."

XXX.

In refusing to give defendants' proposed Instruction No. 20, which was as follows:

"You are instructed that if you find from the evidence that at or about the time the Jovita Land Company began the sale of its lots, these defendants, or either of them consulted with lawyers for the purpose of advising them or either of them as to whether or not the sale of land under the contracts in evidence was legal and not in violation of law, and that said defendants, or either of them, were advised by counsel learned in the law that it would not be in violation of law to sell their land under such contracts, and that if the said Land Company and these defendants did not participate in the allotment of the land that neither the company or these defendants would be violating the law, regardless of what the purchasers might do, then and in that case your verdict should be an acquittal of these defendants, or either of them."

XXXI.

In refusing to give the defendants' proposed Instruction No. 22, which was as follows:

"I instruct you that the defendants in this case are entitled to the individual opinion of each member of the jury as to their guilt or innocence and if any juror entertains a reasonable doubt as to their guilt of any one of the necessary elements of the crime charged he should not vote for a verdict of guilty merely because any other or other jurors, even a majority of them, believed the defendants guilty."

XXXII.

In refusing to give defendants' proposed Instruction No. 24, which was as follows:

"You are instructed that there is nothing contained in the letters or circulars set out in the indictment that is even suggestive of a scheme similar to a lottery offering prizes dependent upon lot or chance, nor on their face are they concerning such a scheme.

Standing alone, by themselves, the defendants would commit no crime by depositing in the mails such letters or

circulars, therefore, you must look to other evidence to determine if the said letters and circulars are concerning a scheme to a lottery, as charged in the indictment."

XXXIII.

In refusing to give defendants' proposed Instruction No. 28, which was as follows:

"I instruct you that if from the evidence or statements of Counsel you have gained the impression that the Jovita Land Company or either of these defendants, lost money or gained money by reason of the alleged transactions, you must entirely disregard it for any purpose for the reason that whether they gained or lost by the transaction has nothing to do with this case; neither does it make any difference whether or not the property sold by the Jovita Land Company was worth the amount it was sold for. There is no charge of fraud in the indictment against these defendants and there is no evidence upon which you would be justified in presuming any fraud."

XXXIV.

In pronouncing a judgment against the said defendants, and each of them.

WHEREFORE, said defendant and plaintiff in error, R. E. Glass, prays that the judgment of said Court be reversed, and that the Court be directed to sustain defendants' demurrer to said indictment, or to grant a new trial of said cause.

F. E. HAMMOND,

Attorney for defendant and plaintiff in error, R. E. Glass.

Service of the within Assignments of Error by delivery of a copy to the undersigned is hereby acknowledged this 16th day of February, 1914.

CLAY ALLEN,

U. S. District Attorney.

Indorsed: Assignments of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 16, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

In the United States District Court for the Western District of Washington, Northern Division

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

No. 2168. Bill of Exceptions.

EXCEPTION No. I.

BE IT REMEMBERED, That upon the 20th day of May, A. D. 1912, an indictment was returned in the above entitled Court, charging the defendants, W. A. Ridgway and R. E. Glass, jointly, with having violated Section No. 3894 of the Revised Statutes, and Section No. 213 of the Penal Code of 1910, (Act March 4, 1909).

That thereafter, said defendants, jointly, interposed a demurrer to the said indictment.

Thereafter, said demurrer was, by the Court, overruled, to which ruling and decision of the Court, said defendants, and each of them, by their respective Attorneys, then and there excepted; and their exceptions were allowed.

EXCEPTION No. II.

BE IT FURTHER REMEMBERED, That this cause came on duly and regularly for trial upon the 19th day of December, A. D. 1913, during the November, 1913 term, before the Honorable Jeremiah Neterer, District Judge, for the Western District of Washington, Northern Division; the United States being represented by Clay Allen, United States District Attorney, and Winter S. Martin, Assistant United States District Attorney for said Western District of Washington, Northern Division; and the defendants, W. A. Ridgway and R. E. Glass, appearing in person and by J. A. Kerr and Frank E. Hammond, their Attorneys; and the said defendants, W. A. Ridgway and R. E. Glass, having prior thereto been duly arraigned, to-wit: on the 19th day of June, 1913, and having pleaded not guilty to said indictment; a jury of twelve good and lawful men, being duly called, empannelled and sworn, the said cause thereupon proceeded to trial.

Witnesses on behalf of the Government of the United States were produced and sworn, who testified that the

defendants, Ridgway and Glass, in the latter part of 1908, on behalf of themselves and other persons, caused to be incorporated, the Jovita Land Company; That the Jovita Land Company acquired a tract of land between the City of Seattle and Tacoma, Washington, containing about five hundred (500) acres; This property or addition was designated as "Jovita", and was, by the Jovita Land Company, platted into lots and blocks, there being 2713 lots and tracts ranging in size from 40x120 feet to ..... acres; That after purchasing the property, the Jovita Land Company, proceeded to improve the property by clearing the land, building houses, grading streets, building side-walks, and otherwise making the property attractive; That the lots and tracts as finally delivered to the purchasers were of unequal size and value; That after platting the land, the Jovita Land Company, of which the defendant, W. A. Ridgway, was President, and the defendant, R. E. Glass, was Secretary and Treasurer, proceeded to sell the land upon contract, each interest in the tract of land being sold for the uniform price of One Hundred and Thirty Dollars ($130.00) each.

In selling the land an undivided interest was sold to each purchaser, and at the time of the sale, the particular lot or lots which the purchasers agreed to buy, were not known or designated, and it was agreed in the contract, which was introduced in evidence as the Government's Exhibit No. Twenty-three (23), that after all the land had been sold, the purchasers or their representatives should meet upon the property and at that time, the Jovita Land Company would deliver to the purchasers, or their representatives, deeds to all the property so sold by the Jovita Land Company and purchased by the lot buyers, at which time the lot buyers could divide the property among themselves.

For the most part the letters and circulars set forth in the indictment and other literature, were sent out through the mail at times subsequent to the initial contract payments.

That prior to the 4th day of July, 1910, the Jovita Land Company caused notice to be given to the alleged lot buyers of the selection and appointment of certain representatives who would act for the contract holders and who were requested to meet on said date and be present on the land of the company; that on the date last men-

tioned a meeting was had at which were present these representatives, together with many other contract holders of the company, several hundred in number. Between 8:00 or 9:00 o'clock in the morning, the defendant, W. A. Ridgway, announced to the purchasers there assembled, that the Jovita Land Company was ready to turn over the deeds to the Trustees whom might be chosen by the people there assembled. By viva voce vote, five Trustees were chosen from among the persons present. These Trustees were then called forward, and the defendant, W. A. Ridgway, delivered to these Trustees, deeds to each and every lot or tract of the property sold, and took their receipt for the same. These deeds covering substantially all of the 2713 lots to be distributed had, prior to the drawing, been prepared and signed and acknowledged by the defendant, W. A. Ridgway. These deeds were executed in blank form as to the name of the grantee in each case. On the day of the drawing many of these deeds so prepared were by the employes of the company at the time filled in and actually distributed to the grantees selected by lot at the drawing and thereafter from time to time the remaining number of deeds were sent through the mails and distributed from the offices of the Company to the various and numerous alleged purchasers in various parts of the district and surrounding country. After these deeds were delivered to the Trustees, the defendant, Ridgway, withdrew from any further participation in the subsequent proceedings and went to Tacoma, Washington, but subsequently during the day, returned to the property. The defendant, Glass, was present at his home, but not personally present at the drawing.

That the defendant, R. E. Glass, was almost continually during the existence of the Jovita Land Company from its inception down to the day of the drawing and for some time thereafter present in both the offices of the company and on the land of the company at Jovita. The location of the land at Jovita is at a distance of approximately twenty-five miles from the City of Seattle, and approximately twelve miles from the City of Tacoma, and situated on an interurban line of railway running between Seattle and Tacoma, affording rapid and convenient means of transportation. The Jovita Land Company secured and used during its existence ample and complete office accommodations in the City of Seattle, and in this office a room was set apart for R. E. Glass for his occupation and use as

it might be required by him. The defendant, R. E. Glass, together with the defendant, Ridgway, were by all the employes of the company recognized as the directing officers. The employes Bacharach and Lyons, together with all the other employes of the company, took their orders from either the defendant Glass, or the defendant Ridgway. The defendant Ridgway was seldom in the City of Seattle prior to the drawing, while the defendant Glass was continually and constantly in the City of Seattle, or on the property during the life of the Company.

Immediately after the defendant, Ridgway, had delivered the deeds to the five Trustees selected by the purchasers, the said five Trustees, so selected, proceeded to divide the property among the purchasers, by drawing lots therefor, in the following manner:

The name of each purchaser had prior to the day of the drawing been written upon separate cards and placed in a box, which revolved upon an axis; upon other cards had been written the description of each lot or tract of ground contained in the five hundred (500) acres, known as "Jovita," and placed in another similar box; that is to say: If there were 2713 lots sold, there were 2713 names put in one box and in another box there were placed 2713 cards, on each of which was written the description of a lot. These five Trustees then drew one name from one box and at the same time drew a card containing the description of a lot from the other box, and the purchaser whose name was drawn from one box, was given a deed to the property described on the card drawn from the other box at the time his name was drawn.

The evidence connecting the defendants Glass & Ridgway with the transmission through the mail of the literature offered in evidence as well as the specific letters and literature mentioned in the indictment was circumstantial and tending to support a knowledge on their part of the general character of the literature and letters. No direct evidence was offered that Glass and Ridgway personally deposited the letters or literature mentioned in the indictment in the mail or requested that these particular letters should be sent through the mail. The employees in the office testified that the defendants did not request them to send through the mail the particular letters and literature mentioned in the indictment. There were some ten employees maintained in the offices, and these employees

had charge of the mailing of all matters sent from the office. The letters and circulars set forth in the indictment and introduced in evidence were matters which were sent out in the ordinary routine of the office. The defendant, Ridgway, was in the City of Seattle and Tacoma, but a very few times, he residing in Spokane, several hundred miles away from the office. The defendant, Glass, made his home upon the property, and superintended the improvements that were being made upon the property, and when he came to Seattle, he would come in on the Interurban, go to the office, sign the checks or attend to what might be absolutely necessary, and leave upon the next Interurban for the property; the Interurban train leaving every hour.

The witness Salzer testified that within the week prior to the drawing the defendant Glass, handed to the witness a diagram of a platform and boxes, and requested him to construct upon the land of the defendant Jovita Land Company a platform which was afterwards used at the time of the drawing; the writing upon the diagram furnished was in the hand writing of Lyons, an employee. The witness Salzer testified that a few days prior to the drawing the defendant Glass asked witness to construct two revolving boxes of unusual design, the construction of which boxes was, at the instance of the defendant Glass, concealed from all the other employes. The boxes constructed by the witness Salzer were set upon the platform constructed by him and were actually used as boxes from which were drawn the names of the owners and the numbers of the lots on the day of the drawing. All of the persons who handled the deeds and tickets, after the tickets had been drawn from the boxes by the Trustees selected at the drawing, and who performed the physical work of filling them out and delivering them to the grantees on the date of the drawing, were employes of the company who were directed in the office of the company to be present on the Jovita land on the day of the drawing.

The defendant Ridgway called a meeting to order at the time of the drawing and was personally present during a good portion of the day. All of the witnesses for both sides agreed that at the time the meeting was called to order tickets upon which had been previously inscribed twenty-seven hundred and thirteen names, and other tickets upon which had been inscribed twenty-seven hundred and

thirteen different pieces of property were present and ready for use upon the morning of the drawing. No witness for either the government or the defense gave any explanation of the source from which the tickets had come.

The witness, McCash, called for the government, testified that prior to the drawing he had a conversation with the defendant Glass and the defendant Glass had stated to the witness McCash that the customary way to dispose of lots under the circumstances was by drawing.

The evidence submitted by the government of various witnesses, including the real estate expert called, established the cost of the entire property, together with the comparative cost of the tracts as distributed, showing a variation from five to ten dollars an acre in the case of a great majority of the lots to one of an approximate value of five to six thousand dollars, each tract of which of this wide disparity of value was distributed to the twenty-seven hundred and thirteen buyers upon a consideration which was in all cases the same, that is, one hundred and thirty dollars each.

A Mr. Bacharach was book-keeper and in charge of the Seattle office, and a Mr. Lyons was in charge of the advertising, and a Miss Potts was the head stenographer and in charge of all routine correspondence and in charge of the office in the absence of Mr. Bacharach.

C. A. Stokes was called as a witness on behalf of the Government, who being sworn, testified, that he had owned the property platted by the Jovita Land Company, and known as "Jovita," and had negotiated with F. E. Hammond for the sale of the property, and had in the latter part of 1908, made a contract to sell the land to R. E. Glass, and placed in escrow, deeds to the property, and after receiving full payment for the land, deeds conveying the land direct to the Jovita Land Company were delivered to the Jovita Land Company.

The witness was then asked to testify as to the amount of money he was paid for the land. To which interrogatories, the defendants, and each of them duly objected, and objected to the introduction of any evidence as to the purchase price of the land, paid by the Jovita Land Company, for the reason that it was irrelevant and incompetent and was offered for the purpose of prejudicing the

minds of the Jury. The objections of the defendants were by the Court overruled. To which ruling the defendants, and each of them, duly excepted, and their exceptions were allowed. Th witness then testified, that he had received One Hundred and twenty thousand Dollars ($120,000.00) for the land and improvements.

During the progress of the trial, the Government called Adolph Behrans, who being sworn, testified that he had been in the real estate business in the City of Seattle for twenty-one (21) years, and at the request of Mr. Allen, United States District Attorney, he had, within the past ten days, examined the property sold by the Jovita Land Company. He was then interrogated as to the value of the land and the character of the soil at the time he made his investigation, for Mr. Allen, to which interrogatories, the defendants, and each of them, then and there objected, and objected to the introduction of any evidence relative to the value of the land at the time of the said examination of the same by the witness, for the reason that it was incompetent, irrelevant and offered for the purpose of prejudicing the Jury; which objections the Court overruled, and the said defendants, and each of them thereupon excepted to said ruling, and their exceptions were allowed. The said witness testified that said land was of the value of not to exceed Sixty-five ($65.00) Dollars, per acre, and the forty (40) foot lots were not worth to exceed Five ($5.00) Dollars or Ten ($10.00) Dollars each, and the cottages upon the property could be built from Six Hundred ($600.00) Dollars to One Thousand ($1000.00) Dollars each. That the values in July, 1910, were but slightly less.

The Government then called as a witness upon its behalf, David Young, who being sworn, testified that he had been in the real estate business in the City of Seattle for about nine (9) years; that he had examined the property in company with the witness, Adolph Behrans, at the request of the United States District Attorney. He was then asked to give the value of the property and its general conditions, to which interrogatories, the defendants, and each of them, objected, and objected to the introduction of any evidence as to the value of the land, for the reason that the evidence was incompetent and irrelevant and offered for the purpose of prejudicing the jury; which objections were by the Court overruled, and the defendants, and each of them thereupon excepted, and their excep-

tions were allowed. The witness then testified that in his opinion the land was worth not to exceed the sum of Seventy-five ($75.00) Dollars per acre, and that the forty (40) foot lots were worth not to exceed Four ($4.00) Dollars or Five ($5.00) Dollars each.

EXCEPTION NO. III.

Carrie M. Buck, a witness called on behalf of the Government, testified that she had received through the post office establishment of the United States, the literature set forth in Count Two (2) of the indictment, and the same was introduced in evidence as Government's Exhibit Fifty-five (55).

George Spicher and H. Giesy were called as witnesses on behalf of the Government, and testified to having received through the post office establishment of the United States, the letter referrd to in Count Seven (7) of the indictment, and the same was admitted in evidence as the Government's Exhibit Twenty-five (25).

Subsequent to the testimony of the said witnesses, Buck, Spicher and Giesy, the Government called as a witness, Ira C. Luman, and the Government offered to prove by the said witness, Ira C. Luman, that he had received through the United States mails, the literature referred to in Count Three (3) of the indictment, and the literature referred to in Count Four (4) of the indictment, whereupon the defendants, and each of them objected to the introduction of any evidence as to Counts Three (3) and Four (4) of the indictment, for the reason that the said Count Two (2) and Count Seven (7) of the indictment, concerning which evidence had already been introduced by the Government, were based upon the law as in force prior to January 1910, making the offense charged against the defendants, a misdemeanor; whereas, the offense charged in Counts Three (3) and Four (4) of the indictment, is a felony, and is based upon the law as in force subsequent to January, 1910, and the Government having proceeded to prosecute the defendants upon Counts Two (2) and Seven (7) of the indictment, for a misdemeanor, could not, also, prosecute the defendants in the same indictment, for a felony. The Court overruled the objections of the defendants, and the defendants, and each of them thereupon excepted to the ruling of the Court, and their exceptions

were allowed. The witness then testified that he had received through the United States mails, the literature in Counts Three (3) and Four (4) of the indictment, and the same was introduced in evidence as the Government's Exhibit Sixty-three (63) and Sixty (60), respectively.

During the progress of the trial, said defendants filed with the Court, the following proposed instructions, among others, with the request that the same be given on behalf of the said defendants, as a part of the Court's charge to the Jury:

No. 4

"I instruct you, gentlemen of the jury, that the scheme concerning which the law forbids any letters or circulars to be deposited in the mails is such a scheme as is similar to a lottery offering prizes to those who participate in said scheme, the ultimate ownership of which prizes must depend upon lot or chance."

No. 5

"I instruct you that any number of persons may buy jointly a tract of land in any condition and subsequently divide it among themselves by drawing lots and the person selling them the land, even though he knew they intended to divide it by a drawing or otherwise, would not commit a crime if he deposited or caused to be deposited any mail matter relative thereto in the post office of the United States similar to that set forth in the indictment in this case."

No. 6

"I instruct you that in determining whether there was a lottery or other similar scheme of chance devised or carried out; that where two or more persons who are the owners of undivided lots of land determine or arrange to apportion their respective interests therein among themselves, and the plan of so apportioning or dividing the same is by casting lots and thereby ascertain and apportion to each his interest in severalty by chance or lot, this is not a lottery or similar scheme of chance as contemplated by the law, for, the law contemplates that, in a lottery or other similar scheme, the title to the prize or property has not yet passed to the purchaser or person entitled to the chance and that it is by lottery or similar scheme of chance that the purchasers obtain the property or so called prizes, and the law contemplates that the title, at the time of the

lottery or other similar scheme of chance was had or held, was in some one other than the purchaser or person taking the chance, and that the right which was held by the parties expecting or seeking prizes was merely a right to participate in the lottery or drawing with the understanding or agreeemnt, express or implied, that, thereafter, there would be conveyed or transferred to him the prize or property which might, by reason of such lottery or similar scheme, fall to him by reason of such drawing or scheme. That in all lotteries, or similar schemes of chance, as defined by law, there must be some party or parties holding, at the time of the allotment or drawing, the title to the prizes or property to be drawn, other than the persons among whom the prizes are to be awarded by lot or chance."

No. 7

"You are instructed that at the time the Jovita Land Company delivered deeds to the lot buyers all title to the land, houses and other improvements passed from the Jovita Land Company to the lot buyers and the lot buyers were then the absolute owners and entitled to the possession and control of the property; that thereafter all the lot buyers owned an undivided interest in each and every house or part or parcel of land, which included the alleged prizes alleged to have been offered; that upon the delivery of said deeds all control over the subsequent disposition of said property passed from said Land Company, or these defendants, and any purchaser if he wished could have gone into the State Court and had the land partitioned equitably among them or they had the right to divide it among themselves by lot.

No. 8

"You are further instructed that at the time of the execution of each contract of sale of an undivided interest, the purchaser became the owner of an undivided interest in the land, houses and other improvements owned by the Jovita Land Company and as long as the purchaser made his payments the Land Company could not divest him of his title and the purchasers title was as complete in the alleged prizes as in the unimproved land; in other words you are instructed that the purchasers from the time of their purchase at all times owned the alleged prizes as well as the unimproved land and small tracts and these

purchasers after obtaining title could lawfully allot their land among themselves as they might agree without any control or interference upon the part of the defendants."

No. 9

"You are further instructed that if the said purchasers had refused to allot their land by lot, chance or drawing, the Jovita Land Company could not have compelled them to hold a drawing, nor could the Jovita Land Company have held any drawing or apportionment that would have been binding upon the lot buyers."

No. 10

"This brings you to the consideration of the second question, viz: Did the defendants, Ridgway and Glass, devise a scheme in connection with the sale of the Land by which a drawing was to be conducted under their supervision, or that of their authorized agents and employees, as charged by the Government; or did the defendants as claimed by them, simply sell to various and sundry persons undivided interests in the land platted by Jovita Land Company, leaving it to the purchasers themselves to partition said lots among themselves as they saw fit? Contracts of sale for said land have been exhibited to you which it is claimed the Land Company executed, which contracts purported by their terms to sell but an undivided interest in the land platted, and which provided further that the several purchasers should meet and partition the land as they saw fit. These contracts further provide that no selling agent has any power to alter or change their terms. The defendants further deny that they or either of them at any time authorized any agents to vary, change or modify the terms of such contracts, and deny any knowledge that any such agent had ever attempted so to do. The defendants further deny that they or either of them had anything whatever to do with any drawing or the division of said lots, and deny that the plan therefor was their plan, or that they supervised it, or that the same was supervised with their knowledge or consent by any agent or employee of their or of said Land Company.

You are accordingly instructed that if you find that defendants did in good faith sell undivided interests in the property platted by said Land Company, and that the

plan of allottment was not their plan, but a plan adopted and carried into effect by the purchasers for the purpose of partitioning the property among themselves, your verdict must be for the defendants.''

No. 10½

''If, however, on the other hand, you should find that there was a lottery scheme offering prizes and that it was the scheme of the defendants, or either of them, and that they or either of them sold the property to the several purchasers in contemplation that the same would be allotted by chance and that thereafter a drawing was held prior to the transfer of title from the Land Company to the purchasers and that the defendants or either of them arranged and supervised such drawing or caused the same to be done, and that in connection with the sale of said property the defendants, or either of them, within three years prior to May 20, 1912, deposited or caused to be deposited in the United States mails letters and circulars as alleged by the Government for the purpose of furthering and aiding such scheme, then I instruct you the defendants would be guilty of the crime charged, and in this connection, I instruct you that the delivery of deeds to the authorized representatives of the purchasers would be the same as a delivery of the deeds to the actual purchasers of the lots.''

No. 11

''I instruct you that unless you can find that the defendants personally deposited the mail matter or directed some one else to do so you must acquit the defendants.''

No. 14

''I instruct you that the law presumes that the Jovita Land Company and the purchasers intended to carry out their contract in a lawful manner and the Government must overcome this presumption by evidence that convinces you beyond a reasonable doubt and it is presumed by Law that all parties connected with the sale or purchase of the Land believed and contemplated that after the delivery of the deeds the land would be partitioned among them in a legitimate manner.''

No. 18

"I instruct you that the mere fact that these defendants were officers of the corporation known as the Jovita Land Company is not of itself sufficient to prove that they knew that there was in existence a scheme similar to lottery, being conducted by the Jovita Land Company, nor is it sufficient to prove that they deposited or caused to be deposited the letters or circulars set forth in the indictment."

No. 19

"The mere reception of the matter, alleged to have been deposited in the mail, by the person to whom it was addressed, would not of itself establish the fact that defendants deposited or caused to be deposited, such matter in the mails."

No. 22

"I instruct you that the defendants in this case are entitled to the individual opinion of each member of the jury as to their guilt or innocense and if any juror entertains a reasonable doubt as to their guilt of any one of the necessary elements of the crime charged he should not vote for a verdict of guilty merely because any other or other jurors, even a majority of them, believed the defendants guilty."

No. 24

"You are instructed that there is nothing contained in the letters or circulars set out in the indictment that is even suggestive of a scheme similar to a lottery offering prizes dependent upon lot or chance, nor on their face are they concerning such a scheme.

Standing along, by themselves, the defendants would commit no crime by depositing in the mails such letters or circulars, therefore, you must look to other evidence to determine if the said letters and circulars are concerning a scheme to a lottery, as charged in the indictment."

No. 28

"I instruct you that if from the evidence or statements of Counsel you have gained the impression that the Jovita Land Company or either of these defendants, lost money or gained money by reason of the alleged transactions, you must entirely disregard it for any purpose for the

reason that whether they gained or lost by the transaction has nothing to do with this case; neither does it make any difference whether or not the property sold by the Jovita Land Company was worth the amount it was sold for. There is no charge of fraud in the indictment against these defendants and there is no evidence upon which you would be justified in presuming any fraud."

Thereafter, at the close of the testimony, and after the arguments to the Jury, the Court charged the Jury as follows:

INSTRUCTIONS OF THE COURT.

"Gentlemen of the Jury:

All parties connected with the prosecution of a criminal case have special duties and functions resting upon them. The United States Attorney and his assistant, representing the government on the one side, and the attorneys for the defendant, representing the several defendants, each have their separate functions. Their duties are to present to the Court and the Jury all material and relevant facts which bear upon the guilt or innocence of the defendant. In the discharge of these duties these parties necessarily appear as partisans, and endeavor to present all of the facts in the most favorable light to sustain their contentions with relation to the issues before you. Your duty and that of the presiding Judge is different. It is the duty of the Judge to impartially instruct you upon every matter that is presented and endeavor to secure for the government and the defendants a fair and impartial presentation of every contention which is claimed bears upon the issue, and to exclude, so far as possible, matters which are foreign to the issues, and which will not aid the jury in applying the facts of the law or to conclude with relation to the guilt or innocence of the defendant. Your duty, gentlemen of the jury, is a special function which is separate and apart from any of the others, and makes you the sole and exclusive judges of the facts. All of these facts, matters of fact, are solely left to you. You are the sole judges of the facts, and must determine what they are. You take the law, as applicable to the facts, from me as presiding Judge. You have been accepted as trial jurors by the attorneys for the United States and the defendants because they have confidence in your integrity, in your

fairness, and in the belief that you will approach the issue in this case free from bias, and with open minds impressionable to receive the truth and define it from the evidence. You will not pass upon the facts in this case or arrive at a conclusion because of any desire to favor either the government or the defendant, or because of any feeling of fear either for or against either party, but with openness of mind and acuteness of conscience approach the subject with that feeling of responsibility which the subject demands, keeping in the mind the fact that the government can only be maintained and be of service by the enforcement of criminal laws, not out of a spirit of revenge, but rather a desire to impress upon all people that the laws of the country must be lived up to, and if violated the parties will be punished. You will therefore accord to the government in this case and to the defendants a fair and impartial consideration which the subject demands, and fully discharge your obligations as jurors.

The issue in this case is not an action prosecuted by the government's attorney either in his own behalf or on behalf of anybody else, for any act which has been committed or alleged to have been committed by anybody. While evidence has been admitted here in relation to matters which are not directly in issue; they have simply been admitted before you as circumstances to be considered will all of the circumstances and facts surrounding the testimony in the case, to enable you to arrive at a more intelligent conclusion.

The fact that an indictment has been been presented in this case by the Grand Jury is no evidence that any crime has been committed. The grand jury simply make this presentment upon the evidence which has been presented by the government, and that is simply a paper charge against the defendants which requires that every material allegation in the indictment be established by the vidence, which is admitted beyond a reasonable doubt. The defendants have pleaded not guilty to the indictment, and that places in issue every material fact alleged in the indictment. You are further instructed that the defendants are presumed to be innocent of the offence chargd in this case until they are proved guilty beyond a reasonable doubt; and that presumption continues with them throughout the entire trial; and until you are convinced by the evidence which is offered and admitted beyond every reasonable

doubt. This presumption is not a mere matter of form, but it is a right which is accorded under the law, and must be given effect until the testimony which is offered and admitted overcomes this presumption and convinces you beyond a reasonable doubt. The indictment in this case contains ten counts, which will be sent with you to the Jury Room, but is not to be considered as evidence in the case. You are instructed however, that three counts in this indictment have been disposed of heretofore, to-wit: counts 1, 5, and 9, have been disposed of, and there is no evidence with relation to counts 6, 8 and 10; no testimony has been offered in this case concerning those counts. You are, therefore, not concerned with those counts, except as to count 1, which is the only count in the indictment which describes a scheme that is alleged to be similar to a lottery, and that part of Count 1 commencing on line 19 on page 3 of the indictment, and concluding with Count 1 is a part of each of the subsequent Counts in the indictment, and must be considered with each Count as it is descriptive of the scheme concerning which the defendants are alleged to have mailed matter which it is claimed is in violation of the law. Therefore the counts involved in the issues in this case are 2, 3, 4, and 7, and they must be considered by you in your consideration of each of these counts, that is, Count 1 is just a description of the scheme concerning which the defendants are alleged to have mailed matter which, it is claimed, is in violation of law. These counts are all similar in most respects, with the exception of mailing different matters. The descriptive part of the scheme is set out in Count 1, and will be considered by you in connection with each County; and that is the offering of prizes dependent in all or in part upon lot or chance. All of the counts in the indictment are based, so far as you are concerned in your deliberations in this case, upon Sec. 213 of the Penal Code of the United States, which, so far as is pertinent, reads as follows: "No letters, packets, postal card or circular concerning any lottery, gift or enterprise or similar scheme offering prizes dependent in all or in part upon lot or chance; and no lottery ticket or part thereof, paper, certificate or instrument purporting to be or representing a ticket, chance, share or interest in or dependent upon the event of a lottery, gift, enterprise or similar scheme offering prizes dependent in whole or in part upon lot or chance * * * and no newspaper, circular, pamphlet or publica-

tion of any kind containing any advertisement of any lottery, gift enterprise or scheme of any kind offering prizes dependent in whole or in part upon lot or chance, or containing any list of prizes drawn or awarded by means of any such lottery, gift enterprise or scheme, whether said list contains any part or all of such prizes which shall be deposited in or carried by the mails of the United States or be delivered by any postmaster or letter carrier."

The law further provides that whoever shall knowingly deposit or cause to be deposited, or shall knowingly send or cause to be sent anything to be conveyed or delivered by mail in violation of this law shall be punished. You are instructed that the gist of the offense comprehended by this law is the use of the mails to promote or give information relative to a lottery or other similar scheme of chance.

You are instructed that there is no Act of Congress in the United States which prohibits the operation or conduct of a lottery; only the use of the mails to carry out the plan or scheme is prohibited, or any of the instrumentality or interstate commerce; and the government of the United States maintains what it calls a postal system for the carriage of the mails. It has a right to say what matter shall be carried and what shall not be carried. It may prohibit the use of the mails even for the promotion of legitimate enterprises, and it follows, of course, that it may prohibit the use of the mails for the promotion or furtherance of any scheme or plan or enterprise or business thought by Congress to be inimical to the public interest, or for any reason demoralinzing; and in the wisdom of Congress it has seen fit to prohibit the use of the mail for the purpose of mailing or carrying out a lottery scheme or plan. You will therefore see that the following questions are submitted for your consideration:

FIRST: At or about the times of the alleged posting of the letters or matter set out in the indictment, was there a scheme similar to a lottery, which offered prizes dependent in all or in part upon lot or chance? and

SECOND: Did these defendants plan such scheme as charged in the indictment? and

THIRD: Was such scheme actually carried out by a drawing for prizes held prior to issuing deeds, as alleged

in the indictment, by distributing prizes by lot or chance; and was such distribution made under the supervision or direction of the defendants Ridgway and Glass, or their agents or employees?

FOURTH: Did the defendants deposit or cause to be deposited in the post office establishment of the United States, the letters or circulars set forth in the indictment; knowing at such times that such letters or circulars were deposited for the promotion and concerning the alleged scheme as set forth in the indictment?

You are advised that a lottery is a species of gaming or gambling; and it may be described as a scheme for the distribution of prizes by chance among persons who have paid or agreed to pay for a valuable consideration for chance of obtaining a prize. The prize may be anything of value. It is not essential that it be paid in money or that it have a fixed market value. It is essential, however, that the distribution be by chance or lot; but the mode adopted is wholly immaterial, so long as chance is the controlling feature. To constitute a lottery it is not necessary that there be blanks in the drawing. Nor is it essential that some persons secure prizes of less value than the price paid for participating in the lottery. The scheme is none the less a lottery because it promises prizes to all of the participants, none of which are of a value less than is paid for the chance of participating, provided that the values are unequal, and there is always a chance of the participants to win something greater than the value which he paid for the chance of participating. It is obvious therefore if after considering all of the evidence before you you conclude that the plan, scheme, project or enterprise, whatever it may be called, relied upon by the government in support of its contention that was a lottery, was in fact, under the law, as defined to you in these instructions is not a lottery, your duty is at an end, because it would be unnecessary for you to proceed further and determine the second question in the issue, which is, did the defendants either mail or cause to be mailed the particular matter set forth or referred to in each of the different counts, 2, 3, 4 and 7, in the indictment? In other words, the first question is was there a lottery? And the second question is, did the defendants mail or cause to be mailed one of these papers referred to or concerning the lottery?

You are instructed that the mere selling that the mere

selling of undivided interest in property is legitimate, and involves none of the essential elements in a lottery or of a similar scheme of chance; and any one could properly use the mails for the promotion of such sales; that is to say, if one or more of you owned one or more farms, or one or more town lots, you would have a perfect right to sell all or part thereof to one or more persons; or at your option, you could sell any number of undivided interests therein to as many different persons. That would be entirely legitimate; and when such sales of undivided interest are made in good faith, without suggestions or inducements, at or before the time of sale, of a distribution by resort to lot or chance, it would be immaterial if thereafter the purchaser as the owners of the several undivided interests adopted a method of chance for the division of the property, or the distribution to the several purchasers. In such case there would be no lottery scheme for the element of chance did not operate or become an inducement to the purchaser of shares or interests. On the other hand, one owning a number of parcels of property cannot, under the pretense of making sales of undivided interests therein, base it upon the value or the supposed value thereof, making use of a scheme by which the inducement to purchase however much disguised or covered up are in reality the essential features of a lottery; that is to say, it is the substance and not the mere form of the plan or enterprise by which it is to be characterized as lawful or unlawful.

Now, applying these principles to the case under consideration, you are instructed that if the defendants, acting in the name of or through or on behalf of the Jovita Land Co. (I think that is the name charged and referred to in the indictment)

Mr. Kerr: That is right.

(THE COURT: continuing) and desiring to dispose of or sell a large number of parcels of land which they or the company owned devised a method of sale of undivided interest therein which involved no element of chance, and which did not contemplate that sooner or later there would be an award or distribution by resort to lot or chance, the mere fact that at a later date, and after the defendants had made a complete transfer of the property, if you find a transfer was made, and no longer had any interest therein, the purchasers then being the owners of the undivided interests con-

ceived of a method of lot or chance to distribute the several parcels, that fact would not operate to make the plan a lottery scheme, or render it illegitimate, or impose any blame for wrong on the defendants. On the other hand, however, if the plan was either directly or indirectly, expressly or otherwise to induce persons to make purchases with the understanding or upon the expectation that by purchasing contracts they would have a chance to procure a prize or property of considerable value by resort to lot, or if the natural and probable effect of the scheme by reason of its inherent characteristics was a drawing by lot or chance, then you would be warranted in finding that the enterprise was a lottery or similar scheme of chance from the beginning. In such case, the defendants being parties thereto, cannot excuse themselves from the criminality of their acts by turning over the property and withdrawing from further participation before the drawing actually took place. In other words, it is not a controlling consideration that deeds had been executed to all this property with the grantee left blank and handed to a trustee before the drawing, and that the defendants took no part in such drawing. The preliminary question for you to consider is whether the defendants did or did not set on foot a scheme or plan which they believed, or had reason to believe, would eventuate in such a drawing. Was the drawing the natural and reasonable outcome of the enterprise? Why was such a plan adopted by the defendants for the sale of their property? What was their motives? Did they or did they not expect that by reason of the nature of the property, the number of parcels, the number of contracts, the form and substance of the contracts, the printed literature, the improvements upon the property of various values, and all other circumstances pertaining to the carrying on of the project, purchasing the contracts or shares with the expectation of having a drawing, or distributing the property by lot or chance? Did the defendants intend that such expectation on the part of the public would be an inducement and would be the moving consideration in securing purchasers. The Government contends that that was the purpose and motive. The defense contends to the contrary. It is for you to say on which side the truth lies.

You are instructed that, under a proper interpretation, the contracts entered into between the Jovita Land Company and the purchasers does not provide for the drawing or distribution by resort to lot or chance, and in itself the instrument implies nothing illegal or wrong on the part of

the defendants, and that point it will be your duty to consider as a circumstance in their favor, but is not conclusive; but a circumstance to be considered with all other facts and circumstances as detailed by the testimony; and determine whether the contracts did, in fact, state the real intentions of the parties.

You are further instructed in this connection that every sane person is presumed to intend the natural and logical consequences of his voluntary act; that is, if the defendants or either of them in the conduct of this service must have contemplated that the United States mail would have to be used in the correspondence with the contracting parties for the purchase of an interest in this land, and that their, or either of their employees under general directions sent out this mail matter as that is described in the indictment, then you would be justified in finding, if the evidence is sufficient to convince you beyond a reasonable doubt, that they did cause those things to be mailed, although they did not direct any one particular piece of mail to be sent to a particular addressee; and if you find that they were trustees in the Jovita Land Company, and executive and managing heads, and exercised an active supervision and control over the corporation's affairs, they would be responsible for any general directions given in relation to the mailing of literature, whether they personally gave the directions to mail or not.

You will, of course, understand that every man who buys property for speculation expects to make a profit. You are not to be misled by these instructions into the belief that just because the purchasers expected it might be of greater value than one hundred and thirty dollars that it would necessarily be a lottery. You should consider well all the facts and circumstances in evidence, and in the light of the entire record say what the real motive and intent and purposes of these defendants were, and let your vrdict be accordingly. Now, as to the other phase of this case, the instructions may be very simple. For if you should find that there was a lottery scheme, and that these defendants were engaged in promoting it, the other questions are simply questions of fact having little to do with motive or intent; and that is, did the defendants or either of them mail or authorize to be mailed the matter set out in the indictment? If you are satisfied by the evidence beyond a reasonable doubt that the matters described in the indictment or any

part thereof were deposited in the United States mail for transmission to the addressee or addresses at or about the time named in the indictment, and within three years preceding the filing of the indictment; that is, three years prior to May 20, 1912, and that these acts of so placing such documents in the mails for transmission was done by the defendants or either of them, or by one acting under the direction or control of these defendants or either of them, in the usual course of employment necessarily involving the mailing of such documents, and that such course of employment so involved the mailing of such documents, either directed or put into operation by the defendant or either of them, so controlling or directing the persons so mailing the letters or matter, and in such course of business cause such letters or matters to be placed in the mail, as that term is used in the indictment.

Before you can consider any statement in any process of showing the purpose of either defendant, you must find from the evidence that such defendant or defendants authorized or caused its use. If the defendants devised this scheme for the distribution of the property for the purpose, and with the intention and understanding that people would be attracted by it and would be induced to purchase interests or shares for the reasons among other things that in the drawing by resort to lot at which every contractor or shareholder would have the chance to draw a more valuable piece of property, as well as a smaller piece of property, if you find beyond a reasonable doubt that they did devise and further such plan for such a purpose, and with such intent and understanding, and that such scheme was that described in the indictment, then you may find that they were engaged in a lottery or a similar scheme of offering prizes dependent in whole or in part upon lot or chance; even though you find they contemplated withdrawing and did actually withdraw from participation in the enterprise before the drawing was held, and that they took no part in the drawing. If on the other hand, you find that the defendants did not purpose, intend or believe the plan devised by them would be regarded by the public and by contemplating purchasers as offering an opportunity to the purchaser to procure by lot or chance property of considerable value for a comparatively small sum paid for the share or interest; in other words, if you find that they did not know or understand that the scheme would be attractive for the reason, among others, that sooner or later

there was to be a drawing by resort to chance at which valuable prizes were to be drawn, then you should find that the scheme was not in the nature of a lottery, even though after the defendants transferred the property the shareholders distributed the several parcels thereof by resort to lot or chance. This involves, as you understand, to a large extent, the element of good faith on the part of the defendants. Were they in good faith simply selling undivided interest in properties of which they were possessed, with no other inducement to purchasers than the value, or supposed value of the property or the merits thereof, or were they in bad faith, and under cover of legal form, knowingly and in reality appealing to the weakness of the passion prevalent in human nature, the gambling spirit, by which many people are easily induced to invest or to risk comparatively small sums upon the chance of winning a prize of much greater value. If you find that they were acting in good faith in the manner which I have explained, then you should find that they were not knowingly engaged in a lottery scheme, and in mailing or causing to be mailed matter which could not lawfully and legally be done. On the other hand, if you find that they were acting in bad faith in the manner which I have explained, then you should find that the scheme involved the essential features of a lottery or scheme of offering prizs dependent in all or in part upon lot or chance.

As already suggested, it is a question of what the essential nature of the whole enterprise was. It is for you to say what meaning these defendants intended to convey by the representations in any pamphlets or circulars that they may have used in promoting the sale of property, what impression did they expect to make upon the public thereby? How did thy intend that a purchaser would understand such statements? Was it intended thereby impliedly to represent that such property should be purchased by paying one hundred and thirty dollars for a chance at a drawing at which the property was to be awarded by lot or chance? Or was it the intention to convey the meaning that it could be procured in some other way by the payment of one hundred and thirty dollars? Or what was the intention intended to be made?

You are instructed that the law does not, as a rule, permit proof to be given of what one man has said or done in order to affect the matter. One can only be affected by what he has said or done himself. What one has said or done cannot be evidence against another unless he was acting

with the other's authority, or in accordance with a plan which was adopted by both parties which was common to both or all, and in which they were interested. When a thing which the parties have been doing separately and apart from each other, and in the interest of a common plan or purpose, or if you find that there was a common plan or purpose, can only be explained on the theory that they were acting in pursuance of such plan which they had previously adopted, and which was well understood, it may be found that they had previously adopted the plan disclosed by the evidence and which led to the result as described. One question, therefore, in this case is, whether the acts of the defendants when considered in their relation to one another do fairly and convincingly indicate that they were acting in pursuance of a common plan and purpose, and that the defendants, Glass and Ridgway were acting with relation to such plan, and to the advancement of a common plan and purpose in the advertisement and disposal of the property referred to in the indictment, and concerning which testimony has been received; and if these acts so fit together and match each other that the only reasonable explanation of them is that they were acting for and on behalf of each other and according to a well understood and well defined plan, if you are convinced by the evidence that such is the fact, then you may consider the act or the statement of one in furtherance of such a common plan as you may find, if any, to have been adopted as against the other defendant, whether the other defendant was present at the time of the statement or at the time of the action or not, at the time the statement was made, or at the time the act was done, or whether they were not.

You are instructed, gentlemen of the jury, that if you should find from the evidence in this case or have a reasonable doubt upon that phase of the issue in this case as to whether the defendant, Ridgway, knew anything about the matter of the conducting of the business of the Jovita Land Company or of the plan, method or scheme set forth in the literature that you may find from the evidence was sent out from the office of the Jovita Land Company, and that he in good faith sought advice of one or more attorneys at law as to what he could lawfully do in connection with the platting and sale of the property of the Jovita Land Company, and fully and honestly laid all of the facts before his counsel and in good faith and honestly followed such advice

as you may find that he was given, replying upon and believing it to be correct, and that in his connection with this land company he only intended that the acts performed by him in connection with the company should be lawful, he cannot, under such circumstances, be convicted of knowingly doing a thing which was prohibited by law, even if such advice that was given him was incorrect. But, on the other hand, you are instructed that no man can wilfully violate the law and excuse himself from the consequences thereof by pleading that he sought the advice of counsel. As to whether the defendant, Ridgway, knew of the plan, method or scheme, if it may be so designated, adopted and pursued by the Jovita Land Company or acted upon the advice of counsel, will be considered by you with all of the facts and circumstances as disclosed by the evidence. You will take into consideration all of the testimony which was before you as to what he said to his attorney, and how he advised him, and the advice that was given him, and you will consider likewise all of the testimony in this case as to whether he knew at the time the purpose and relation to the literature which has been offered in testimony in this case, or whether, after he received the advice he knowingly permitted or authorized literature to be mailed as charged in the indictment.

You are further instructed, gentlemen of the jury, that in this case considerable evidence was admitted to go before you in the mailing of circulars and matter other than that charged in the indictment. You are instructed that that was permitted to go before you not for the purpose of establishing an offense other than that charged in the indictment. You cannot convict the defendants in this case if you believe any matter other than that set out in the indictment was mailed, and have a reasonable doubt as to whether the matters charged or come of the matters charged in the indictment was mailed as set forth in the indictment. Some instructions were given you in the course of the trial with relation to some of this matter. As I think, you are further instructed that it was permitted to go to you not for the purpose of establishing an offense, other than that charged in the indictment. You cannot convict the defendants in this case if you believe any matter other than that set out in the indictment was mailed, and have a reasonable doubt as to whether the matter charged, or some of the matters charged in the indictment was mailed as set forth in the indictment.

Nor can you convict the defendants or either of them if you believe that any other mail matter was mailed than that which has been admitted in evidence here, if you have a reasonable doubt whether any of the matter which is charged in the indictment was mailed. That evidence was permitted to go before you simply for the purpose of giving you the surrounding circumstances with which this company was transacting their business, with the view of enabling you to arrive at the motive, purpose and intent with which the defendants operated in the disposition and distribution of the property which is referred to in the indictment, and concerning which evidence was admitted, and you cannot and must not consider that testimony for any other purpose.

You are instructed, gentlemen of the jury, that some evidence has been permitted to go before you of the value of the tract of land composing the plat, of the Jovita Land Company during the latter part of the year 1909, and up to the First day of July, 1910. So this has not been permitted to go before you in determining any questions of fraud, or as to whether any person was defrauded by the defendants. There is no evidence in this case to be considered in relation to any fraudulent acts of any kind; and you are not concerned with any inquiry in relation to anything of that kind, and must dispel any such thought from your minds if any may lurk there. That evidence was only permitted to go before you for the purpose of surrounding you with the conditions with relation to this land surrounding the offense covered by this indictment and as an element to be taken into consideration by you if it will aid you in a conclusion in determining the purpose, motive or intent of the defendants in outlining the plan, system or scheme by which this land was to be placed on the market and subsequently distributed either by the purchasers or to the purchasers, and subsequently the scheme or plan or such a scheme or plan as comes within the section of the act of Congress which has been read to you, to promote which matter is prohibited to be carried in the United States mail.

You are instructed that while the burden is upon the government to establish every material allegation of the indictment beyond every reasonable doubt that this need not be done by direct and positive testimony, but may be established by circumstantial evidence. Circumstantial evidence is legal and competent in criminal cases when it is of such a character as to exclude every reasonable pypothesis other

than that the defendants are guilty, and when it is of such a character it is entitled to the same weight as direct evidence. What is meant by circumstantial evidence is proof of such facts and circumstances surrounding the defendants and the transactions charged in the indictment concerning which testimony was received and the commission of the crime charged tends to show the guilt or innocence of a party charged; and if these facts and circumstances are sufficient to satisfy you beyond a reasonable doubt then such evidence is sufficient to authorize a conviction. No rule can be given as to the quantity or circumstantial evidence which in any case shall be deemed sufficient. All of the circumstances concerning which testimony was given should be taken into consideration, and from all of these you should determine the guilt or innocence of the parties charged. All of the circumstances established by the evidence in this case must be consistent with each other, consistent with the hypothesis that the accused are guilty, and at the same time inconsistent with the hypothesis that they are innocent, and with every other reasonable hypothesis except that of guilt.

Some evidence relating to the honesty and integrity of the defendant, Ridgway, in the community in which he resides has been introduced in this case. The law permits that class of evidence to be received. It is an exception to the rule which generally excludes heresay testimony. The theory of the law is that if a man has so lived in his community as to have acquired a reputation for honesty and integrity the presumption is that he is entitled to it. That is, the presumption is that he is honest, or else he would not have such a reputation, and that is allowed to be introduced. General reputation in the community where a person resides is what people say of him, or what people think of him in that community in relation to his probity, honsety and integrity in dealing with people. The value of such evidence is necessarily dependent upon the opportunity of the witnesses for knowing about the opinion of people generally in that community with relation to such honesty, and is not determined by what one individual may say from his own dealings with a party; and when you consider any evidence relating to a man who has borne a good reputation for honesty and integrity you are to remember the fact that he has borne that reputation and consider that in determining whether the charge against him is true. Good character is a fact like all other facts proven in a case to be weighed

and estimated by the jury, and is especially proper to be shown in a case depending upon circumstantial evidence. In a doubtful case it may turn the scale in favor of the accused. It must not be allowed, however, to refute the other testimony in the case, and cannot justify an acquittal where the evidence of guilt is clear and convincing. In considering the testimony in behalf of the reputation of the defendant, Ridgway, for honesty and integrity you will take into consideration the scope of the knowledge of the several witnesses who have testified in that regard and give it such weight and credence as you deem the testimony is entitled to, taking into account the opportunity of the witnesses for knowing about such reputation, and if such testimony is sufficient to raise a reasonable doubt in your minds as to whether the defendant, Ridgway, did commit the offense charged in the indictment, then you should find him not guilty. But if you are convinced beyond a reasonable doubt from all of the evidence in the case of the guilt of the defendant then it is immaterial as to what the reputation was at any time as to their honesty and integrity, and you should return a verdict of guilty as charged.

You are instructed that a reasonable doubt for a trial juror is such a doubt as a man of ordinary prudence, sensibility and decision in determining an issue of like concern to himself as that before the jury, would allow to have an influence upon him, or make him pause or hesitate in arriving at his determination, but such doubts could be entertained only from the want of evidence to satisfy you beyond a reasonable doubt, or a doubt which is raised by the evidence, and should not be merely speculative, imaginative, or conjectural. If you are satisfied beyond a reasonable doubt, if from a candid consideration of the entire evidence which has been offered and admitted direct and circumstantial, he has an abiding conviction of the truth of the charge made.

You are instructed, gentlemen of the jury, that a defendant charged with a crime has the right to take the stand and testify in his own behalf, if he so desires; and if he does not take the stand and testify in his own behalf, no inference of guilt is to be taken against him. In your deliberations in this case, no inference is to be taken against the defendant, Glass, because he did not take the stand and testify in his own behalf.

You, gentlemen of the jury, are the sole judges of the

facts in this case; and you alone determine what the facts are. If I have referred to any fact in this case, it has not been done to indicate to you any opinion that I may have upon the facts, but simply in interpreting some proposition of law which is involved with the facts.

You are, likewise, the sole judges of the credibility of the witnesses who have testified before you, and it is for you to determine the weight or credit that you desire to attach to the testimony of any witness. You are to take into consideration the demeanor of the witnesses upon the witness stand, the opportunities or lack of opportunities they have for knowing the facts concerning which they have testified, the reasonableness or unreasonableness of the stories told by the witnesses who have appeared before you, and from all of the surrounding facts and circumstances in this case determine where the guilt or innocence in this case lies. You will likewise take into consideration the interest or lack of interest of any witness who has testified before you. You will apply to each witness who has testified before you the same tests that you would apply to any other person in the ordinary affairs of life whose truthfulness or veracity may be under consideration by you; and if you find any witness has wilfully testified falsely concerning any material fact in this case, you have the right to disregard his entire testimony, except so far as that may be corroborated by other facts and circumstances in evidence detailed or developed upon the trial in this case.

You will take into consideration all of the evidence that has been offered or admitted before you, and you will wholly disregard the statements of counsel upon both sides in presenting any issue to the Court upon any proposition of law which has been presented, or in the course of the argument of counsel to the Jury where the argument is not supported by the evidence; and you will, likewise, as I stated a moment ago, disregard any statement that I may have made in passing upon any proposition of law which was presented during the trial of this case, and determine this case solely upon the evidence which has been admitted before you, and the law which I have given to you.

You may in this case, find both defendants guilty, if you are convinced beyond a reasonable doubt that the government has proven every material allegation of the several counts in the indictment which were submitted to you; or

you may find them guilty of any one of several counts which you may find in the indictment, or you may find one defendant guilty and the other not guilty, or you may find both not guilty of all the counts.''

That thereafter, said Attorneys for said defendants, and each of them, excepted to the following portions of the Court's charge, and to the refusal of the Court to charge the Jury as requested by said defendants; and said exceptions were by the Court duly allowed, to-wit:

EXCEPTION NO. IV.

The refusal of the Court to give defendants' requested instruction No. 4, in the manner and form requested.

EXCEPTION NO. V.

The refusal of the Court to give defendants' requested instruction No. 5, in the manner and form requested.

EXCEPTION NO. VI.

The refusal of the Court to give defendants' requested instruction No. 6, in the manner and form requested.

EXCEPTION NO. VII.

The refusal of the Court to give defendants' requested instruction No. 7, in the manner and form requested.

EXCEPTION NO. VIII.

The refusal of the Court to give defendants' requested instruction No. 8, in the manner and form requested.

EXCEPTION NO. IX.

The refusal of the Court to give defendants' requested instruction No. 9, in the manner and form requested.

EXCEPTION NO. X.

The refusal of the Court to give defendants' requested instruction No. 10, in the manner and form requested.

EXCEPTION NO. XI.

The refusal of the Court to give defendants' requested instruction No. 10 1-2, in the manner and form requested.

EXCEPTION NO. XII.

The refusal of the Court to give defendants' requested instruction No. 11, in the manner and form requested.

EXCEPTION NO. XIII.

The refusal of the Court to give defendants' requested instruction No. 14, in the manner and form requested.

EXCEPTION NO. XIV.

The refusal of the Court to give defendants' requested instruction No. 18, in the manner and form requested.

EXCEPTION NO. XV.

The refusal of the Court to give defendants' requested instruction No. 19, in the manner and form requested.

EXCEPTION NO. XVI.

The refusal of the Court to give defendants' requested instruction No. 22, in the manner and form requested.

EXCEPTION NO. XVII.

The refusal of the Court to give defendants' requested instruction No. 24, in the manner and form requested.

EXCEPTION NO. XVIII.

The refusal of the Court to give defendants' requested instruction No. 28, in the manner and form requested.

EXCEPTION NO. XIX.

That portion of the Court's instruction which submitted to the Jury the proposition that the defendants might be adjudged guilty of a depositing of mail matter with reference to a scheme similar to a lottery if the Jury should find that under the plan they had for the sale and disposition of the land that the defendants may, or might, reasonably have contemplated that eventually the lot owners themselves might resort to lot or chance for the distribution of the property.

EXCEPTION NO. XX.

That portion of the Court's instructions in which the Court instructed the Jury to the effect that the executive head of the Jovita Land Company, or the executive officer of the company, or those occupying positions of supervision and control, might be or would be regarded, on account of their official positions, to have authorized the mailing of any such circular, matter, advertising matters, or letters, as the testimony may show had been mailed out from the company's offices in Seattle, as being an improper instruction to be given under the undisputed testimony in this case.

EXCEPTION NO. XXI.

That portion of the Court's instructions with reference to the presumption arising from the mailing of letters or advertising matter or circulars from the offices of the Jovita Land Company, so far as the instructions make the act of any of the employees of the Jovita Land Company who may have mailed such circulars, advertising matter or letters the agents or representatives of the defendants or either one of them in this case, so as to make the defendants or either one of them responsible for the acts of such agent independent of whether there was any testimony from which the jury could conclude that such matter was mailed either with their knowledge or consent, or under their supervision and direction.

EXCEPTION NO. XXII.

That portion of the Court's instruction which began with the statement that if the jury find the defendants were selling the property on the merits.

EXCEPTION NO. XXIII.

That portion of the Court's instructions following, in which the Court indicated that the defendants might be convicted if the jury concluded from the testimony in the case that the plan of sale as contemplated in their contract did not contemplate the sale of the property upon the merits, for the reason that the said instructions was too limited in its application, and assumed that the parties purchasing property under the several contracts, were given the absolute right and power to make disposition of their own property after they had acquired it, and had the right to

make disposition after they acquired title to the property, were incapable of contracting or protecting their own interes.

EXCEPTION NO. XXIV.

That portion of the Court's instructions with reference to the circumstances under which the act or statements of one of these defendants might bind the other, as being fully inapplicable to the facts of this case, there being no evidence whatsoever that any of the acts or statements made by the defendant, Glass, or visa versa, were known to, or had ever been communicated to the defendant, Ridgway, nor was there any evidence to show that any statement made by either one of them had been made by such defendant in the presence of the other.

EXCEPTION NO. XXV.

That portion of the Court's instructions to the jury to the effect, that if the jury should find that the plan of sale and disposition of this property, as carried out by these defendants, might, in the judgment of the jury, have contemplated that a drawing might be had at the time the property was turned over to the lot buyers, and that the defendants turned over the property and withdrew, and if the jury believes that the plan contemplated that such a drawing might be conducted by the lot buyers, and that if it did eventuate in a drawing, notwithstanding the fact that the defendants withdrew, they would still be guilty of violating the statute.

Thereupon, the Jury retired, and after consideration, brought into the Court on the 24th day of December, A. D. 1913, a verdict, finding both of the said defendants, guilty, as charged, upon Counts Two (2), Three (3), Four (4) and Seven (7), of said indictment.

Thereafter the Court proceeded to, and did, past sentence upon the said defendants, and each of them.

In pursuance of justice, and that right may be done, the defendant, R. E. Glass, presents the foregoing as his Bill of Exceptions in this cause, and prays that the same may be settled and allowed and signed and certified by the Judge, as provided by law.

FRANK E. HAMMOND,
Attorney for Defendant, R. E. Glass.

The foregoing Bill of Exceptions is correct, in all respects, and is hereby approved, allowed and settled, and made a part of the record herein.

Done in Open Court in the November, 1913, term thereof, and dated this 4th day of May, A. D. 1914.

JEREMIAH NETERER,
Judge.

IT IS HEREBY STIPULATED AND AGREED, that the foregoing Bill of Exceptions is correct in all respects and as such may be by the Court approved, allowed and settled as the Bill of Exceptions in said cause, and as such, filed in said cause and made a part of the record in said cause. Reserving the right to file a supplemental Bill in the event the same may be required.

Dated this 4th day of May, A. D. 1914.

CLAY ALLEN,
United States District Attorney.

FRANK E. HAMMOND,
Attorney for Defendant, R. E. Glass.

Indorsed: Bill of Exceptions. Filed in the United States District Court, Western District of Washington, May 4, 1914. Frank L. Crosbey, Clerk. By Ed M. Lakin, Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

No. 2168

AT LAW.

ORDER ALLOWING WRIT OF ERROR.

Now on this 22d day of June, A. D. 1914, came the defendant, R. E. Glass, by his Attorney, F. E. Hammond, and filed herein and presented to the Court his petition, praying for the allowance of a Writ of Error intended to be urged by him, praying also, that a transcript of the record and pro-

ceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises.

NOW THEREFORE, Upon consideration of said petition, and being fully advised in the premises, the Court does hereby allow the said Writ of Error.

And it is hereby ordered, that a supersedeas and bail having been filed all proceedings in said cause towards the execution of said judgment, are hereby suspended until the determination of said Writ of Error by the said United States Circuit Court of Appeals for the Ninth Circuit.

And it is further ordered, that the defendant, R. E. Glass, having heretofore filed in this Court his supersedeas and bail bond, shall be released from custody, pending the hearing upon said Writ of Error in said United States Circuit Court of Appeals for the Ninth Circuit; and the United States Marshal of this District is hereby ordered and directed to release the said R. E. Glass, from custody, pending the final determination of said Writ of Error herein.

Dated this 22d day of June, A. D. 1914.

JEREMIAH NETERER,

Judge of the United States District Court for the Western District of Washington, Northern Division.

(SEAL)

FRANK L. CROSBY,

Clerk of the District Court of the United States for the Western District of Washington, Northern Division.

Indorsed: Order Allowing Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, June 22, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In the United States Circuit Court of Appeals for the Ninth Circuit.

R. E. Glass, Plaintiff in Error,

vs.

United States of America, Defendant in Error.

No. 2168

AT LAW.

WRIT OF ERROR.

United States of America, Ninth Judicial Circuit.—ss.

The President of the United States of America.

To the Honorable Judge of the District Court of the United States for the Western District of Washington, Northern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court, before you, between The United States of America, as plaintiff, and W. A. Ridgway and R. E. Glass, as defendants, a manifest error hath happened, to the great damage of said R. E. Glass, defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have the same at the City of San Francisco, in the State of California, in said Circuit, on the 20th day of July, A. D. 1914 next, in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS: The Honorable Edward D. White, Chief

Justice of the Supreme Court of the United States of America, this 22d day of June, A. D. 1914.

FRANK L. CROSBY,

Clerk of the United States District Court for the Western District of Washington, Northern Division.

Allowed this 22d day of June, A. D. 1914, after plaintiff in error had filed with the Clerk of this Court with his petition for a Writ of Error, his Assignment of Errors.

(SEAL) JEREMIAH NETERER,

Judge of the District Court of the United States for the Western District of Washington, Northern Division.

Indorsed: Original. No. 2168. In the Circuit Court of Appeals of the United States for the Ninth Circuit, R. E. Glass, Plaintiff in Error vs. United States of America, Defendant in Error. Writ of Error. Service of papers in this case to be made upon Frank E. Hammond, Attorney for R. E. Glass, at No. ..... Street, Room, 602, Mut. Life Bldg., Seattle, Wash. Filed in the U. S. District Court, Western Dist. of Washington, June 22, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

In the United States District Court for the Western District of Washington, Northern Division

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

No. 2168

AT LAW.

CITATION.

TO THE UNITED STATES OF AMERICA, GREETING:

You are hereby cited and admonished to be and appear at a Session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, in said Circuit, on the 20th day of July, A. D. 1914 next, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Western District of Washington, Northern Division, wherein R. E. Glass, is plaintiff in error, and the United States of America, is defendant in error, to

show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS: The Honorable Jeremiah Neterer, Judge of the United States District Court for the Western District of Washington, Northern Division, this 22d day of June, A. D. 1914.

Seal JEREMIAH NETERER.

United States District Judge for the Western District of Washington, Northern Division.

Service of a copy of the foregoing citation is hereby admitted this 22d day of June, A. D. 1914.

CLAY ALLEN,

United States District Attorney for the Western District of Washington, Northern Division.

RETURN ON SERVICE OF WRIT.

United States of America, Western District of Washington, Northern Division.—ss.

I hereby certify and return that I served the foregoing citation on the herein named United States of America, by handing to and leaving a duly certified, true and correct copy thereof, with Clay Allen, United States District Attorney for the Western District of Washington, Northern Division, at Seattle, in said District, on the ———— day of ————————, A. D. 1914.

————————————,

United States Marshal for the Western District of Washington, Northern Division.

Service of the within Citation by delivery of a copy to the undersigned is hereby acknowledged this 22d day of June, 1914.

CLAY ALLEN,
Attorney for Plaintiff.

Indorsed: Original. No. 2168. In the District Court of the United States for the Western District of Washington, Northern Division. United States of America, Plaintiff, vs. W. A. Ridgway and R. E. Glass, Defendants. Citation.

Filed in the U. S. District Court, Western Dist. of Washington, June 22, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. Service of papers in this case to be made upon Frank E. Hammond, Attorney for R. E. Glass, at No. —— Street, Room 602 Mut. Life Bldg., Seattle, Washington.

In the District Court of the United States for the Western District of Washington, Northern Division.

United States of America, Plaintiff,

vs.

W. A. Ridgway and R. E. Glass, Defendants.

No. 2168

ORDER TO TRANSMIT ORIGINAL EXHIBITS.

Upon stipulation of the plaintiff and defendants in the above entitled cause, it is hereby ordered that the Clerk of the above entitled Court, transmit to the United States Circuit Court of Appeals for the Ninth Circuit, as part of the record in the above entitled cause, all the original exhibits introduced in evidence at the trial of said cause, on behalf of the plaintiff and the defendants; and that said original exhibits be sent up in lieu of printed copies thereof.

Done in Open Court this 10th day of July, A. D. 1914.

JEREMIAH NETERER,
Judge.

O. K. ALLEN, Dist. Atty.
O. K. F. E. HAMMOND.

Indorsed: Order to Transmit Original Exhibits. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, July 10, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

No. 2168

STIPULATION.

It is hereby stipulated by and between counsel for Plaintiff in Error and Counsel for Defendant in Error that all the exhibits in this cause, shall be transmitted to and filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, and that none of said exhibits shall be copied into the printed record or printed or reproduced, but that the originals shall be considered and treated as a part of the record in this case upon the hearing upon the merits of said appeal.

F. E. HAMMOND,
Attorney for Plaintiff in Error.

CLAY ALLEN,
Attorney for Defendant in Error.

Indorsed: Stipulation. Filed in the U. S. District Court, Western District of Washington, Northern Division, August 3, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

No. 2168

ORDER.

It appearing that it is impracticable to reproduce or print the exhibits received in evidence upon the trial of this cause, and that they should be transmitted to the Clerk of

the United States Circuit Court of Appeals for the Ninth Circuit to be used upon the consideration of the appeal in this cause, and it further appearing that the parties hereto have stipulated that same shall be so transmitted, and shall not be printed or reproduced, but that the originals shall be considered upon the hearing of the appeal in this cause;

It is therefore ordered that the exhibits introduced in evidence by Plaintiff in Error shall be transmitted by the Clerk of this Court to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and that same shall not be printed or reproduced, but that the originals shall be considered as a part of the record in this cause.

Done in Open Court this 3d day of August, A. D. 1914.

EDWARD E. CUSHAN,
District Judge.

O. K. F. E. HAMMOND, Atty. for R. E. Glass.
O. K. ALLEN, U. S. Atty.

Indorsed: Order. Filed in the U. S. District Court, Western District of Washington, Northern Division, August 3, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

No. 2168

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO EXHIBITS.

United States of America, Western District of Washington. —ss.

I, Frank L. Crosby, Clerk of the District Court of the United States for the Western District of Washington, Northern Division, do hereby certify that the hereto attached sealed package contains Plaintiff's Exhibits 1 to 25, inclusive; 28 to 33, inclusive; 35, 37 to 45, 45-1, 45-2, 45-3, 45-4, 45-5, 46 to 49, inclusive; 51, 53 to 63, inclusive, and Defendants' Exhibits A and B, introduced and used upon the

trial of the foregoing cause, and that the said Exhibits are transmitted to the Circuit Court of Appeals for the Ninth Judicial Circuit, there to be inspected and considered, together with the record on appeal certified of even date herewith; that the said Exhibits are so certified and transmitted pursuant to the orders of the District Court made and entered in said cause July 10, 1914, and August 3, 1914, copies of which orders are attached to and made a part of this certificate, and copies of which said orders are also found on Pages 86 and 88 of said record on appeal.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 11th day of September, 1914.

FRANK L. CROSBY,
Clerk.

By Ed M. LAKIN,
Deputy.

(SEAL)

In the District Court of the United States for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

No. 2168

ORDER EXTENDING TIME TO TRANSMIT RECORD TO CIRCUIT COURT OF APPEALS.

Now on this 21st day of July, 1914, upon motion of attorney for Plaintiff in Error and for sufficient cause appearing, it is ordered that the time within which the Clerk of this Court may prepare, certify and transmit to the United States Circuit Court of Appeals the transcript of the record in this cause be, and the same is hereby extended to and including the 27th day of August, 1914.

JEREMIAH NETERER,
District Judge.

Indorsed: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, July 21, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

No. 2168

ORDER EXTENDING TIME TO TRANSMIT RECORD TO CIRCUIT COURT OF APPEALS.

Now on this 18th day of August, 1914, upon motion of attorney for Plaintiff in Error and for sufficient cause appearing, it is ordered that the time within which the Clerk of this Court may prepare, certify and transmit to the United States Circuit Court of Appeals the transcript of the record in this cause be, and the same is hereby extended to and including the 18th day of September, 1914.

O. K. WINTER S. MARTIN, Asst. U. S. Attorney.
August 18th, 1914.

JEREMIAM NETERER,
District Judge.

Indorsed: Order Extending Time to Transmit record to Circuit Court of Appeals. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, August 18, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

No. 2168

STIPULATION AS TO RECORD AND EXHIBITS.

IT IS HEREBY STIPULATED, by and between the parties hereto by their respective Counsel:

I.

That the following designated papers comprise all the papers, exhibits, depositions or other proceedings which are necessary to the hearing of said cause upon Writ of Error

in the United States Circuit Court of Appeals, and that none but such papers need be included in the records of said Court:

A. Indictment.
B. Demurrer.
B-2. Opinion of Court on Demurrer.
B-3. Amended Order Overruling Demurrer (June 17, 1912).
C. Arraignments.
D. Pleas.
E. Verdict.
F. Judgment.
G. Sentence.
H. Petition for Writ of Error.
I. Assignments of Error.
J. Bill of Exceptions.
K. Order allowing Writ of Error.
L. Writ of Error.
M. Citation.
N. Summons and Severance.
O. Stipulation as to Record and Exhibits.
P. Order to attach Original Exhibits.
Q. Supersedeas Bond of R. E. Glass.

II. LL

That the Original Exhibits in this cause may be attached to the record by the Clerk, and forwarded to the Circuit Court of Appeals, and it shall not be necessary to print said Exhibits in the Record.

Dated this 10th day of July, A. D. 1914.

CLAY ALLEN,
United States District Attorney.

F. E. HAMMOND,
Attorney for Defendant, R. E. Glass.

Indorsed: Stipulation as to Record and Exhibits. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, July 10, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA, Plaintiff,

vs.

W. A. RIDGWAY AND R. E. GLASS, Defendants.

No. 2168

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD, ETC.

United States of America, Western Dist. of Washington.—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify the foregoing printed pages, numbered from 1 to 97, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause on Writ of Error therein to the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on return to said Writ of Error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the Plaintiff in Error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S. as Amended by Sec. 6, Act of March 2, 1905), for making record, certificate or return—280 folios at 30c	$ 84.00
Certificate of Clerk to transcript of record, 3 folios at 30c	.90
Seal to said Certificate	.40
Certificate of Clerk to Original Exhibits, 3 folios at 30c	.90
Seal to said Certificate	.40
Statement of Cost of printing said transcript of record, collected and paid	102.00
	$188.60

I hereby certify that the above cost for preparing, certifying and printing said record amounting to $188.60, has been paid me by F. E. Hammond, Esq., attorney for Plaintiff in Error.

I further certify that I hereby attach and herewith transmit the original Writ of Error and original Citation issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 11th day of September, 1914.

FRANK L. CROSBY,
Clerk.

(SEAL)

In the United States Circuit Court of Appeals for the Ninth Circuit.

R. E. Glass, Plaintiff in Error,

vs.

United States of America, Defendant in Error.

AT LAW No. 2168

WRIT OF ERROR

United States of America, Ninth Judicial Circuit.—ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA.

To the Honorable Judge of the District Court of the United States for the Western District of Washington, Northern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court, before you, between the United States of America, as plaintiff, and W. A. Ridgway and R. E. Glass as defendants, a manifest error hath happened, to the great damage of said R. E. Glass, defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have the same at the City of San Francisco, in the State of California, in said Circuit, on the 20th day of July, A. D. 1914 next, in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS: The Honorable Edward D. White, Chief

Justice of the Supreme Court of the United States of America, this 22nd day of June, A. D. 114.

FRANK L. CROSBY,
Clerk of the United States District Court for the Western District of Washington, Northern Division.

Allowed this 22nd day of June, A. D. 1914, after plaintiff in error had filed with the Clerk of this Court with his petition for a Writ of Error, his Assignment of Errors.

JEREMIAH NETERER,
Judge of the District Court of the United States for the Western District of Washington, Northern Division.

(Seal)

Indorsed: Original No. 2168. In the Circuit Court of Appeals of the United States for the Ninth Circuit. R. E. Glass, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Service of papers in this case to be made upon Frank E. Hammond, Attorney for R. E. Glass at No. —— Street Room 602 Mut. Life Bldg. Block, Seattle, Washington. Filed in the U. S. District Court, Western Dist. of Washington, June 22, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA, Plaintiff,
vs.
W. A. RIDGWAY AND R. E. GLASS, Defendants.

No. 2168

AT LAW

CITATION

TO THE UNITED STATES OF AMERICA, GREETING:

You are hereby cited and admonished to be and appear at a Session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, in said Circuit, on the 20th day of July, A. D. 1914, next, pursuant to a writ of error

filed in the Clerk's Office of the District Court of the United States for the Western District of Washington, Northern Division, wherein R. E. Glass, is plaintiff in error, and the United States of America, is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Jeremiah Neterer, Judge of The United States District Court for the Western District of Washington, Northern Division, this 22nd day of June, A. D. 1914.

Seal

JEREMIAH NETERER,
United States District Judge for the Western District of Washington, Northern Division.

Service of a copy of the foregoing citation is hereby admitted this 22 day of June, A. D. 1914.

CLAY ALLEN,
United States District Attorney for the Western District of Washington, Northern Division.

RETURN OF SERVICE OF WRIT

United States of America, Western District of Washington
Northern Division.—ss.

I hereby certify and return that I served the foregoing citation on the herein named United States of America, by handing to and leaving a duly certified, true and correct copy thereof, with Clay Allen, United States District Attorney for the Western District of Washington, Northern Division, at Seattle, in said District on the ..... day of ....., A. D. 1914.

.....

United States Marshal for the Western District of Washington, Northern Division.

Service of the within Citation by delivery of a copy to the undersigned is hereby acknowledged this 22 day of June, 1914.

CLAY ALLEN,
Attorney for Plaintiff.

Endorsed: Original No. 2168. In the District Court of the United States for the Western District of Washington, Northern Division. United States of America, Plaintiff, vs. W. A. Ridgway and R. E. Glass, Defendants. Citation, Service of papers in this case to be made upon Frank E. Hammond, Attorney for R. E. Glass, at No.....Street.....Room 602 Mut. Life Bldg. Block, Seattle, Washington. Filed in the U. S. District Court, Western Dist. of Washington, June 22, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.